THE Freeman

IDEAS ON LIBERTY

MAY 1963

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THE Freeman

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LEONARD E. READ *President*, Foundation for Economic Education

PAUL L. POIROT *Managing Editor*

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The REAL Weakness of UNIONS

MELVIN D. BARGER

TRADE UNIONS are in trouble. Not serious trouble, yet. But clouds are spreading over the union movement, and it seems to be losing its place in the public favor. There are loud clamors for putting stricter government curbs on unions and perhaps revoking their longtime immunity from antitrust laws.[1] Meanwhile, unions are steadily losing their membership in key industries. They are also making only token progress in their struggle to organize the growing work force of white collar workers and other potential members such as teachers and the textile workers of the South. And the situation is worsening.

The press is taking note of this. Last September, an ordinarily pro-union journal of opinion featured an article entitled "Labor's Ebbing Strength."[2] The story had a decidedly pessimistic tone. The ink was hardly dry on this one before a leading general magazine published a story under the heading, "Is Labor on the Skids?"[3] Not long after that another large circulation periodical jumped on the same bandwagon in a two-part series that began by asking, "Has Success Spoiled Big Labor?"[4]

The thread of reality weaving through all these stories is that trade-unionism is in a phase of steady retreat. "Union membership, continuing its descending curve, has shrunk to new lows for the last twenty-five years; still worse, perhaps, the enlistment of new members has ground to a

[1] The traditional union immunity from antitrust is said to have begun with the passing of the Clayton Act in 1914.

Mr. Barger is a public relations representative in Jackson, Michigan.

[2] By George Kirstein in *The Nation*, September 1, 1962, p. 86.

[3] By Thomas B. Morgan, in *Look*, September 11, 1962, p. 69.

[4] By Harold H. Martin, in *The Saturday Evening Post*, December 8, 1962, p. 75.

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frustrated halt on almost all fronts," said one writer.[5] And the facts confirm this. The United Auto Workers, for example, has skidded from a membership strength of 1,418,000 in 1953 to 1,136,000 in 1960. The Steelworkers, despite their strategic hold on the nation's economy, fell by 10 per cent between 1956 and 1960. Other big losers have been the Machinists (95,000 members in two years!), the two big textile unions (289,000 in the past decade), municipal transportation employees (75,000 gone), and the Carpenters (104,000 in six years). And these losses in membership don't tell all the story. There is also the significant fact that organized labor is slipping in relation to the total labor force. In 1954 it was 35.1 per cent of the total nonfarm work force, but by 1960 it had dropped to 32.1 per cent.[6]

Still, union power is an awesome force to be reckoned with in the U.S. economy. It is still possible for a handful of striking employees to tie up an entire industry, and one union was able to put the newspapers in New York City out of business for an unprecedented length of time. Labor leaders still dominate the scene, and a former labor union counsel is now seated on the U.S. Supreme Court. In some ways, unions seem stronger than ever. But is there a hidden weakness in union power that may become more evident in the years immediately ahead?

Compulsion and Intervention

There is. Stated briefly, that weakness is *an excessive reliance on compulsory practices and other federal interventionism.* That is to say, the very policies that brought unions to great heights of power may now be working in subtle ways to destroy them. Yet labor leaders cannot abandon these policies, for the entire system of trade-unionism in the United States has become dependent on them. If anything, the present decline in unionism may even trigger demands for more compulsion and interventionism, not less. When that happens, ironically enough, labor leaders will themselves be filling the same reactionary role that they so eagerly forced on businessmen in the past. It will then be the labor leader, not the businessman, who yearns for a return to previous conditions.

At first glance, however, it is difficult to see the weaknesses involved in the compulsory approach. It would seem to be strength that enables organized labor to develop tremendous political power and

[5] George Kirstein, *op. cit.*
[6] Harold H. Martin, *op. cit.*

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force the passage of legislation favorable to union interests. It would also seem to be strength when most of the heavy manufacturing industries and all the transportation and communication systems are organized under union shop agreements, as they now are. It appears to be strength to have millions of workers paying their dues under the check-off system and actually being signed up for union membership by company personnel departments. But in all these things there is weakness, and it must have its day, too.

Wagner Act Concessions

It is often forgotten today that unions did not come to power by conventional means—i.e., by competing for the loyalty and support of workers and winning bargaining rights under free market conditions even in the face of stubborn employer resistance. The tremendous upsurge in unionism came only after 1935, when Congress passed the Wagner Act and effectively stripped employers of the means to resist union activity. "The justification for this position was that only through government support could labor meet management on anything like equal terms in our industrialized society, and that the time had come when the scales, always so heavily weighted in favor of industry, should be redressed in favor of the workers. Every unfair labor practice banned in the Wagner Act applied to employers and it imposed no restraints whatsoever on the unions."[7]

The result of tipping the scales in favor of the unions was that union membership tripled in the late 1930's. Under the watchful eye of the National Labor Relations Board (NLRB), companies were prevented from issuing anti-union propaganda, hiring labor spies, establishing company unions, or interfering with picketing. Blacklisting and "yellow dog" contracts were outlawed. A revolution in labor relations was underway, and significantly the new conditions gave a powerful boost to John L. Lewis and the C.I.O., which in a whirlwind organization period of only a few years emerged as an aggressive, centralized union with strong vested interests in national politics.

A.F.L. vs. C.I.O.

From the very start, there were strong differences between the old-line union officials like the A.F. of L.'s William Green and the dynamic Mr. Lewis. "Lewis and Green are both for the New Deal," wrote H. L. Mencken in Septem-

[7] Foster Rhea Dulles, *Labor in America* (New York: Thomas Y. Crowell Company, 1960).

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ber 1936, "but it is easy to see that the New Deal wizards favor Lewis as against Green. He is, indeed, far more their kind of man. Green is a respectable Baptist, Odd Fellow, and Elk, and if he had been born on the other side of the street he might have turned out a bank cashier . . . or a college president. *But Lewis is essentially a revolutionist.*"[8] (Italics added).

In *one year*, Lewis' C.I.O. was able to pass in membership figures all that Samuel Gompers' A.F. of L. was able to build in *40* years! But, as Lester Velie has noted, "the difference . . . was that Lewis had the government with him while Gompers had the government against him."[9]

A Federal Responsibility

The revolution wrought by John L. Lewis and the New Deal made a complete change in traditional labor relations. The most radical change was that labor relations became a federal responsibility. Since then all other labor legislation—i.e., the Taft-Hartley Act and the Landrum-Griffin Act—has been merely varying forms of federal intervention. Ironically, the proponents of remedial legislation to discipline unions are actually arguing for more federal intervention, not less (a national Right-to-Work law, for example, would simply continue to strengthen government's hand in labor affairs, and would probably put off the day when labor and managements can contract independently).

Having soared to power through the compulsory approach, union leaders were unable (or unwilling) to abandon it, or even to limit it. One of the sacred canons of union policy, for example, is the union shop, where all workers in a bargaining unit are compelled to belong to the union and pay dues. It is regarded as being necessary to union security, even though it does violence to the individual's freedom of choice and endorses a principle that we would be bound to reject in many other matters.[10]

[8] From *H. L. Mencken on Politics*, edited by Malcolm Moos (New York: Vintage Books, 1960).

[9] Lester Velie, *Labor U.S.A.* (New York: Harper & Brothers, 1959). Mr. Velie also noted that this is something Lewis won't concede to this day!

[10] It should be remembered that federal intervention and compulsion of the individual worker are often one and the same thing. The union shop is an arbitrary arrangement, frequently brought about when a majority of employees in a bargaining unit vote under an NLRB election to have a union certified as their bargaining agent. The dissenting employees are then automatically forced to join the union as a condition of employment (except, of course, in the states where Right-to-Work laws supersede the federal statute). Without the NLRB, dissenting workers would not have to join the union unless they chose to.

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Compulsory Membership for Those Who Won't Join Voluntarily

But there are also boomerang effects in this kind of a situation. By demanding compulsory union membership, union leaders are in effect admitting that they can't endure the presence of even small pockets of dissenters who don't wish to embrace their program. They have admitted that their ability to persuade and attract workers into the movement is ineffective and must be backed by coercion to succeed. They have even admitted that unionism isn't really as popular with workers as it is claimed to be, for what need would there be to compel a worker to join an association that he wishes to affiliate with anyhow?

That is, they are admitting weakness – the weakness of being unable to promote and maintain voluntary unionism. Even a warm ally of the union movement saw excessive reliance on compulsion as a sign of weakness: "The insistence on the part of some American unions on the rule of the 'union shop' according to which the worker must become a member in good standing of a union in order to keep his job, is . . . more understandable as an indication of organization weakness. A strong union movement does not need to be provided with such pressures." This was written about 20 years ago by Gunnar Myrdal, in some side observations on the labor movement in *An American Dilemma,* a massive study on the status of American Negroes.[11]

In fairness to Myrdal, it should be noted that he apparently approved of the provisions of the Wagner Act, and may have felt, as many did, that it "redressed the economic imbalance which was previously on the side of employers." What he and others evidently did not see was that unions were practically invited to press for the "union shop" under the Wagner Act.[12] Weakness or not, union leaders have seized the concept of the "union shop" as the fastest and most thorough method of concentrating power and getting membership dues.

The compulsory approach has also been applied to managements. Using their political power, trade unions are openly seeking to alter the political climate to the disadvantage of companies and to the immediate advantage of unions. (This is, of course, a game that many other organized pressure groups also like to play). Only re-

[11] (New York: Harper & Brothers, 1944).

[12] Under the Wagner Act the "union shop" existed in a more drastic form called the "closed shop." The latter was outlawed by the Taft-Hartley Act. Both forms involve compulsory membership.

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cently Walter Reuther urged that the President be given power to seize industries and their profits when an employer balks at effective bargaining and creates a national emergency.[13] Unions are also heavily committed to minimum wage legislation, legislation to prohibit employers from moving to other regions, and similar compulsory tactics.

A Long-Run Liability

In relying on government-sponsored advantage, trade unions are not unlike industries that seek special protection in the form of tariff or subsidy. While the legislation may seem to protect the industry at a certain stage, it must someday become a liability to the very group it is trying to protect, for it leaves them perpetually dependent on the tariff or the subsidy, and unprepared for the voluntary approach. Also, the advantages of special favors tend to disappear when other groups win the right to share them. Unions as a group have received special privileges from legislation. But now strong voices are demanding that legislation be enacted to curtail the privileges of unions. After that occurs, what will unions have to sustain them?

Well, certainly not the evangelical zeal that it would take to recruit the millions of workers still outside the union fold. At some point in their history, unions lost this. Perhaps much of that loss occurred when it became policy to accept the compulsory approach instead of the voluntary one. In the long run this may certainly prove to be a grave weakness of unions. ◈

[13] According to an Associated Press dispatch of February 1, 1963.

IDEAS ON LIBERTY

The Voluntary Way

NO LASTING gain has ever come from compulsion. If we seek to force, we but tear apart that which, united, is invincible. There is no way whereby our labor movement may be assured sustained progress in determining its policies and its plans other than sincere democratic deliberation until a unanimous decision is reached. This may seem a cumbrous, slow method to the impatient, but the impatient are more concerned for immediate triumph than for the education of constructive development.

SAMUEL GOMPERS, *From final presidential address to AFL Convention, El Paso, Texas,* 1924

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DEAN RUSSELL

WAGES AND UNEMPLOYMENT

YOU HEAR IT everywhere: Wages must be kept high in order to increase the purchasing power of the wage earners, so that they can buy back the products they make in our factories, and thus keep everybody working and prevent depressions.

But in both theory and practice, that "high wage and spending" cliché confuses the issue in two ways. First, regardless of the division of industrial income between wage earners and dividend earners, that income will still be spent in one way or another for more goods and services. Thus, the issue is not "spending" as such, but rather who does the spending and for what. Second, it is capital investment (which is also "spending") that builds the factories and provides the jobs here under discussion.

Actually, when there is an increase in the percentage of total industrial income going for wages, there is also likely to be an increase in unemployment. Here is how it works: When a company has losses or earns comparatively small profits, a higher percentage of the income available for distribution obviously goes to employees rather than to owners. During such "red ink" recessions and depressions, the owners get little or nothing; the employees sometimes get it all. Yet it is precisely during these loss-and-low-profit periods that unemployment is highest.

The Department of Commerce (Survey of Current Business series) will confirm the following: When the percentage of national income going to capital is higher than usual (that is, when industrial profits are above average), jobs are plentiful and unemployment is comparatively low. That correlation between high profits and more jobs should be obvious to everyone, since you can easily deduce it from the fact that companies go broke and close down when there are losses or inade-

Dr. Russell is Director of the School of Political Economy of the Foundation for Economic Education.

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quate profits. But for some unknown reason, that direct and observable relationship between industrial jobs and profits is usually denied by union leaders and government officials.

Since 1930 and our government's deliberate policy of maintaining wages above the free market level, peacetime unemployment has become our most persistent economic problem. And millions of American workers are still unemployed today, in spite of the highest consumer purchasing power (and spending) in our history. Yet, for the most part, union leaders and lawmakers claim they will correct the situation by raising wages at the expense of profits!

For the past 15 years in Germany (and several other nations), the percentage of national income going for wages has been much lower than in the United States. If the "high wage and consumer spending" theory of employment had any validity at all, it would necessarily follow that there would be more unemployment (percentagewise) in Germany today than in the United States. But the reverse is true. In fact, there has been (and still is) a serious labor shortage in Germany, in spite of the influx of millions of persons from the occupied territories. But the current and increasing demands of the again-powerful German labor unions for "higher wages and more purchasing power" will doubtless soon change that surplus of jobs into a shortage.

All the "consumer purchasing power" in the world cannot create even one permanent job in an economy where the return on capital is negligible or nothing. That is, if every person in the world had twice as much money as he now has to spend, not one job would thereby be created unless the owners of the factories believed they could earn adequate profits. It is the actual and anticipated return on capital, *not* consumer purchasing power as such, that causes investment in new buildings and machines, and the resulting creation of more production and more jobs. Thus, laws and coercive union policies that increase wages at the expense of profits do not create jobs; they destroy them. ◈

• *Reprints of this article are available at 2 cents each, this being No. 37 in a series of 39 suggested answers to various "Clichés of Socialism." Complete list available on request.*

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RESTRICTIONIST PRICING OF LABOR

MURRAY N. ROTHBARD

IT MIGHT BE ASSERTED that labor unions, in exacting higher wage rates on the free market, are achieving monopoly prices. However, it is *not* true that a union wage rate could ever be called a monopoly price. For the characteristic of the monopolist is precisely that he monopolizes a factor or commodity. To obtain a monopoly price, he sells only part of his supply and withholds selling the other part, because selling a lower quantity raises the price on an inelastic demand curve. It is the unique characteristic of labor in a free society, however, that it *cannot* be monopolized. Each individual is a self-owner and cannot be owned by another individual or group. Therefore, in the labor field, no one man or group can own the total supply and withhold part of it from the market. Each man owns himself.

A monopolist's action is always limited by loss of revenue from the withheld supply. But in the case of labor unions, this limitation does not apply. Since each man owns himself, the "withheld" suppliers are *different people* from the ones getting the increased income. If a union, in one way or another, achieves a higher price than its members could command by individual sales, its action is *not* checked by the loss of revenue suffered by the "withheld" laborers. If a union achieves a higher wage, some laborers are earning a higher price, while others are excluded from the market and lose the revenue they would have obtained.

These discharged workers are the main losers in this procedure. Since the union represents the remaining workers, it does not have to concern itself, as the monopolist would, with the fate of these workers. At best, they must shift to some other – nonunionized – industry. The trouble is, however, that the workers are less suited to

Dr. Rothbard is a consulting economist in New York City. This article is largely derived from a more comprehensive treatment of the topic in a chapter on "Monopoly and Competition" from his two-volume treatise, *Man, Economy, and State* (Princeton: D. Van Nostrand, 1962).

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the new industry. Their having been in the now unionized industry implies that their worth in that industry was higher than in the industry to which they must shift; consequently, their wage rate is now lower. Moreover, their entry into the other industry depresses the wage rates of the workers already there.

Consequently, at best, a union can achieve a higher, restrictionist wage rate for its members only at the expense of lowering the wage rates of all other workers in the economy. Production efforts in the economy are also distorted. But, in addition, the wider the scope of union activity and restrictionism in the economy, the more difficult it will be for workers to shift their locations and occupations to find nonunionized havens in which to work. And more and more the tendency will be for the displaced workers to remain permanently or quasi-permanently unemployed, eager to work but unable to find nonrestricted opportunities for employment. The greater the scope of unionism, the more a permanent mass of unemployment will tend to develop.

Unions try as hard as they can to plug all the "loop-holes" of nonunionism, to close all the escape hatches where the dispossessed workmen can find jobs. This is termed "ending the unfair competition of nonunion, low-wage labor." A universal union control and restrictionism would mean permanent mass unemployment, growing ever greater in proportion to the degree that the union exacted its restrictions.

It is a common myth that only the old-style "craft" unions, which deliberately restrict their occupational group to highly skilled trades with relatively few numbers, can restrict the supply of labor. They often maintain stringent standards of membership and numerous devices to cut down the supply of labor entering the trade. This direct restriction of supply doubtless makes it easier to obtain higher wage rates for the remaining workers. But it is highly misleading to believe that the newer-style "industrial" unions do not restrict supply. The fact that they welcome as many members in an industry as possible cloaks their restrictionist policy.

Unemployment by Decree

The crucial point is that the unions insist on a minimum wage rate higher than what would be achieved for the given labor factor without the union. By doing so, they necessarily cut the number of men whom the employer can hire. *Ergo,* the consequence of their policy is to restrict the sup-

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ply of labor, while at the same time they can piously maintain that they are inclusive and democratic, in contrast to the snobbish "aristocrats" of craft unionism.

In fact, the consequences of industrial unionism are more devastating than those of craft unionism. For the craft unions, being small in scope, displace and lower the wages of only a few workers. The industrial unions, larger and more inclusive, depress wages and displace workers on a large scale and, what is even more important, can cause permanent mass unemployment.

The unemployment and the misemployment of labor, caused by restrictionist wage rates, need not always be directly visible. Thus, an industry might be particularly profitable and prosperous, either as a result of a rise in consumer demand for the product or from a cost-lowering innovation in the productive process. In the absence of unions, the industry would expand and hire more workers in response to the new market conditions. But if a union imposes a restrictionist wage rate, it may not cause the unemployment of any current workers in the industry; it may, instead, simply prevent the industry from expanding in response to the requirements of consumer demand and the conditions of the market. Here, in short, the union destroys *potential* jobs in the making and imposes a misallocation of production by preventing expansion. It is true that, without the union, the industry will bid up wage rates *in the process* of expansion; but if unions impose a higher wage rate at the beginning, the expansion will not occur.

Why Workers Agree

Some opponents of unionism go to the extreme of maintaining that unions can *never* be free-market phenomena and are always "monopolistic" or coercive institutions. Although this might be true in actual practice, it is not *necessarily* true. It is very possible that labor unions might arise on the free market and even gain restrictionist wage rates.

How can unions achieve restrictionist wage rates on the free market? The answer can be found by considering the displaced workers. The key problem is: Why do the workers *let themselves* be displaced by the union's minimum wage scale? Since they were willing to work for less before, why do they now meekly agree to being fired and looking for a poorer-paying job? Why do some remain content to continue in a quasi-permanent pocket of unemployment in an industry, waiting to be hired

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at the excessively high rate? The only answer, in the absence of coercion, is that they have adopted on a commandingly high place on their value scales the goal of *not undercutting union wage rates.* Unions, naturally, are most anxious to persuade workers, both union and nonunion, as well as the general public, to believe strongly in the sinfulness of undercutting union wage rates.

This is shown most clearly in those situations where union members refuse to continue working for a firm at a wage rate below a certain minimum (or on other terms of employment). This situation is known as a *strike.* The most curious thing about a strike is that the unions have been able to spread the belief throughout society that the striking members are still "really" working for the company even when they are deliberately and proudly *refusing* to do so. The natural answer of the employer, of course, is to turn somewhere else and to hire laborers who *are* willing to work on the terms offered. Yet unions have been remarkably successful in spreading the idea through society that anyone who accepts such an offer – the "strikebreaker" – is the lowest form of human life.

To the extent, then, that nonunion workers feel ashamed or guilty about "strikebreaking" or other forms of undercutting union-proclaimed wage scales, the displaced or unemployed workers agree to their own fate. These workers, in effect, are being displaced to poorer and less satisfying jobs voluntarily, and remain unemployed for long stretches of time *voluntarily.* It is voluntary because that is the consequence of their voluntary acceptance of the *mystique* of "not crossing the picket line" or of not being a strikebreaker.

There are undoubtedly countless numbers of workers who do not realize that their refusal to cross a picket line, their "sticking to the union," may result in their losing their jobs and remaining unemployed.

When the People Learn

As for unions, the consequences of their activity, when discovered (e.g., displacement or unemployment for oneself or others), will be considered unfortunate by most people. Therefore, it is certain that when knowledge of these consequences becomes widespread, far fewer people will be "pro-union" or hostile to "nonunion" competitors.

Such conclusions will be reinforced when people learn of another consequence of trade union activity: that a restrictionist wage raises costs of production for the

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firms in the industry. This means that the marginal firms in the industry – the ones whose entrepreneurs earn only a bare rent – will be driven out of business, for their costs have risen above their most profitable price on the market – the price that had *already* been attained. Their ejection from the market and the general rise of average costs in the industry signify a general fall in productivity and output, and hence a loss to the consumers. Displacement and unemployment, of course, also impair the general standard of living of the consumers.

Unions have had other important economic consequences. Unions are not *producing* organizations; they do not work for capitalists to improve production. Rather they attempt to persuade workers that they can better their lot at the expense of the employer. Consequently, they invariably attempt as much as possible to establish work rules that hinder management's directives. These work rules amount to preventing management from arranging workers and equipment as it sees fit. In other words, instead of agreeing to submit to the work orders of management in exchange for his pay, the worker now sets up not only minimum wages, but also work rules without which he refuses to work.

Everyone Loses

The effect of these rules is to *lower the marginal productivity of all union workers*. The lowering of marginal value-product schedules has a two-fold result: (1) it itself establishes a restrictionist wage scale with its various consequences, for the marginal value product has fallen while the union insists that the wage rate remain the same; (2) consumers lose by a general lowering of productivity and living standards. Restrictive work rules therefore also lower output. All this is perfectly consistent with a society of individual sovereignty, however, provided always that no force is employed by the union.

To advocate coercive abolition of these work rules would imply literal enslavement of the workers to the dictates of consumers. But, once again, it is certain that knowledge of these various consequences of union activity would greatly weaken the voluntary adherence of many workers and others to the *mystique* of unionism.

Unions, therefore, are theoretically compatible with the existence of a purely free market. In actual fact, however, it is evident to any competent observer that unions acquire almost all their power through the wielding of force, specifically force against

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strikebreakers and against the property of employers. An implicit license to unions to commit violence against strikebreakers is practically universal. Police commonly either remain "neutral" when strikebreakers are molested or else blame the strikebreakers for "provoking" the attacks upon them. Certainly, few pretend that the institution of mass picketing by unions is simply a method of advertising the fact of a strike to anyone passing by.

When unions are permitted to resort to violence, the state or other enforcing agency has implicitly delegated this power to the unions. The unions, then, have become "private states."

Frustrating the Market

We have investigated the consequences of unions' achieving restrictionist prices. This is not to imply, however, that unions *always* achieve such prices in collective bargaining. Indeed, because unions do not own workers and therefore do not sell their labor, the collective bargaining of unions is an artificial replacement for the smooth workings of "individual bargaining" on the labor market. Whereas wage rates on the nonunion labor market will always tend toward equilibrium in a smooth and harmonious manner, its replacement by collective bargaining leaves the negotiators with little or no rudder, with little guidance on what the proper wage rates would be.

Even with both sides trying to *find* the market rate, neither of the parties to the bargain could be sure that a given wage agreement is too high, too low, or approximately correct. Almost invariably, furthermore, the union is not *trying* to discover the market rate, but to impose various arbitrary "principles" of wage determination, such as "keeping up with the cost of living," a "living wage," the "going rate" for comparable labor in other firms or industries, an annual average "productivity" increase, "fair differentials," and so forth. ◈

IDEAS ON LIBERTY ***Emotion vs. Reason***

PEOPLE who would be among the first to deny that prosperity could be brought about by artificially boosting prices, people who would be among the first to point out that minimum price laws might be most harmful to the very industries they were designed to help, will nevertheless advocate minimum wage laws, and denounce opponents of them, without misgivings.

HENRY HAZLITT, *Economics in One Lesson*

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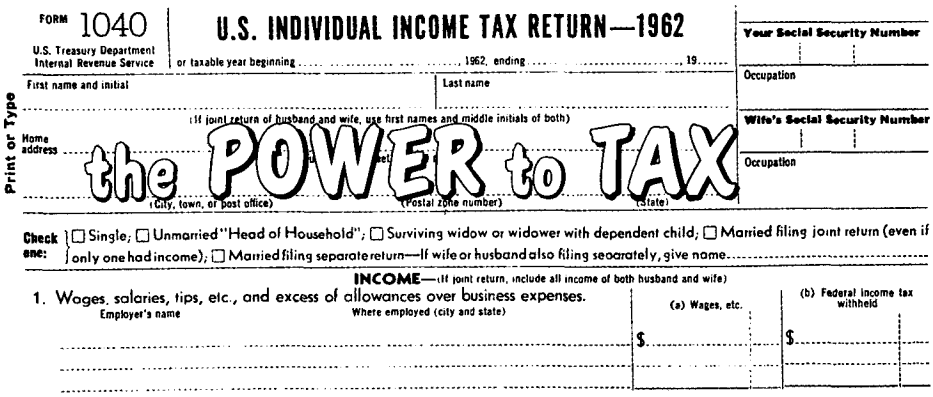
FORM 1040
U.S. Treasury Department
Internal Revenue Service
U.S. INDIVIDUAL INCOME TAX RETURN—1962
or taxable year beginning ..... 1962, ending ..... 19.....
Your Social Security Number
Occupation
Wife's Social Security Number
Occupation
Print or Type
First name and initial
Last name
(If joint return of husband and wife, use first names and middle initials of both)
Home address
(City, town, or post office)
(Postal zone number)
(State)
the POWER to TAX
Check one:
☐ Single; ☐ Unmarried "Head of Household"; ☐ Surviving widow or widower with dependent child; ☐ Married filing joint return (even if only one had income); ☐ Married filing separate return—If wife or husband also filing separately, give name.....
INCOME—(If joint return, include all income of both husband and wife)
1. Wages, salaries, tips, etc., and excess of allowances over business expenses.
Employer's name
Where employed (city and state)
(a) Wages, etc.
(b) Federal income tax withheld
$
$

WILLIAM H. PETERSON

GOOD, now it's finished, the ordeal's over, April fifteenth has come and gone, and another 1040 is completed, double-checked, signed, and, with a sigh of relief, mailed to the Internal Revenue Service Regional Office.

You're happy it's behind you, you think; but on second thought, maybe satisfied or, still better, relieved is the better word. For you remember the cycle is by no means completed, that another phase begins, that for some taxpayers there will be challenges of their returns — "audits," as they are called. That's right, come to think of it, your neighbor down the street was audited, and only last week a fellow at the office was called in. Your brow furrows a bit, for you realize that your return — albeit an honest return, you'd swear on a Bible to that — has to undergo the closest scrutiny: human and electronic eyes will probe every line and figure.

First, some clerk or clerks will give it a rudimentary check: Are the schedules enclosed? Are the W-2's attached? Did his wife sign? Is the arithmetic right? That kind of thing.

Then, the more incisive check by an IRS agent or agents: Did he elect the Standard Deduction, or did he itemize? Are his contributions in line? Is his dividend credit and exclusion in good order? What about his "T & E" (business travel and entertainment expense)? Hmm, here's an item — took his wife to a business convention, but she served as official hostess. Well, that may be all right. . . .

Now, the most probing check

Dr. Peterson is Associate Professor of Economics, Graduate School of Business Administration, New York University, and a weekly contributor to the *Wall Street Journal*.

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of all – the Machine. To the big IBM 7090 you are but a number: no Mr., Mrs., or Miss – a number – 136-14-6928. Your return will be scrutinized and memorized electronically. Permanently. The Machine will in effect "process" a part of your life forever; your return sets down, after all, a precious and intimate year of your existence: Here you list by name your wife, your children and their ages, and other dependents. And you list your family sicknesses – how much you paid Dr. Smith for Johnny's broken arm, how much to the Good Samaritan Hospital for Mary's appendectomy, how much to Dr. Jones, the orthodontist, for Betty Lou's braces. (If there were psychiatric expenses, you'd list those, too.) And your debts – the interest paid on the home mortgage, the interest on the auto loan, the interest on the note at the bank and on your margin account at the stockbroker. And on T & E – your business trip to Phoenix, the lunch with the purchasing agent of XYZ Co., the annual company convention in Chicago, and much more. And your contributions – how much you gave to the American Red Cross, the Boy Scouts, the Salvation Army, the Memorial Church, Yale University, and so on. All this is fed into the Machine, into its memory unit, permanently, along with all your sources of income, the stocks you own, your bonds, your bank accounts, everything. . . .

Without a Search Warrant

So you reflect, and you're disconcerted. The Bill of Rights guarantees the privacy of your papers and effects against a possibly inquisitorial government. Says the Fourth Amendment: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." And now you divulge all, and must be prepared to defend all with canceled checks and other documentation, and without any search warrant. And another thing: in audits the burden of proof is on the taxpayer – in effect, he is assumed to be guilty and must prove himself innocent, thereby reversing a centuries-old principle of Anglo-American jurisprudence. It is discomforting, very.

Especially the size of the tax bite, the swiftly ascending "graduated" rates. You're not so old that you can't still remember when the income tax was relatively mild. That was before World War II.

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The tax didn't hurt so much then. There was no withholding tax. No estimated income forms. No quarterly payments.

Years ago – when was it? – in the late 40's, after the War – you were just plain mad about the whole business, recalling that in their *Manifesto* Marx and Engels had baldly called for "a heavy progressive or graduated income tax" as a means of "making despotic inroads on the rights of property, and on the conditions of bourgeois production." And you recall how some sage and prophetic members of the Congress in 1913 predicted that the 7 per cent top rate could reach the "confiscatory" level of 15 per cent, and how one congressman predicted the income tax would "make liars of us all."

But now you're older, mellower, a respected and responsible member of the community; and, besides, the doctor has warned you about excitement and high blood pressure. Sure, the progressive income tax was a booby trap, but that doesn't mean we have to fall into it, that we can't tame it, refine away its bad points, keep it from getting out of hand. After all, we're grown up, this is a democracy, this is 1963, we're reasonable men, and tax reform and tax cuts are very much in the wind.

Resist the Beginnings

Still – and your brow furrows again – the income tax has indeed gotten out of hand. We've fallen into our own booby trap, from the top rate of 7 per cent in 1913 we voted in a top rate of 24 per cent in 1929. With the social turbulence of the 1930's came a top rate of 79 per cent. We hurdled the 90 per cent mark in World War II and somehow we've stayed at this confiscatory mark and at a broad range of "progressive," i.e., outlandish, rates ever since, in war and peace, in prosperity and recession, under all administrations, whether Republican or Democratic. Is there no end?

You are reminded of a wise Scottish economist, John Ramsay McCulloch, who wrote in 1845 a remarkable bit of economic logic:

> The moment you abandon . . . the cardinal principle of exacting from all individuals the same proportion of their income or their property, you are at sea without rudder or compass, and there is no amount of injustice or folly you may not commit. . . . In such matters the maxim of *obsta principiis* [resist the beginnings] should be firmly adhered to by every prudent and honest statesman. Graduation is not an evil to be paltered with. Adopt it and you will effectually paralyze industry and check accumulation, at the same time that every man who has any property will hasten, by carrying it out of the country, to protect

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it from confiscation. The savages described by Montesquieu, who to get at the fruit cut down the tree, are about as good financiers as the advocates of this sort of taxes.

Certainly the history of the income tax in America has borne out the fears of McCulloch. How the tax structure has grown! Like Topsy, in this way and that! With shelves and shelves of laws, regulations, tax court decisions, and IRS rulings by the thousands and maybe by the tens of thousands—so many in fact that no one man knows them all, bringing into being a whole new profession of tax accountants and tax attorneys. The litigation is endless, costly, and many tax evaders wind up in jail.

Contrast this makeshift, complex, and virtually incomprehensible result with the simplicity of proportionality—seen, for example, in the Judaeo-Christian practice of tithing, with the tithe at 10 per cent, varying proportionately with a man's income and with good times and bad. And so you find yourself agreeing with the President that the present tax system is the "largest single barrier to the full employment of our manpower and resources and to a higher rate of economic growth." You recall that in his TV address last August he said that our tax rates "are so high as to weaken the very essence of the progress of a free society—the incentive of additional returns for additional effort."

Maybe the late economist, Sumner Slichter of Harvard University, put it more pungently when he said: "The tax history of the United States in recent years has been fairly sensational. A visitor from Mars would suspect that a communist fifth columnist was writing the laws for the purpose of making private enterprise unworkable."

So you muse, one taxpayer among millions. Like virtually all your fellow Americans, you want to pay your share for the cost of government, for good government; but while taxes may be as certain as death, and almost as unpleasant, you quietly question the use of taxes as a social tool for the redistribution of wealth. You remember Chief Justice John Marshall's famous dictum that the power to tax involves the power to destroy. . . . ◈

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THE AMERICAN TRADITION

2. Of Constitutionalism and Higher Law

CLARENCE B. CARSON

ONE of the most difficult tasks in teaching history is to convey the uniqueness at its inception of some institution that has long since become familiar and accepted. I asked a class on an examination to "explain historically why Americans would have done so unusual a thing as to have a written constitution." The most common reaction was to assert that there was nothing "unusual" about it. Indeed, some of the answers had that quality of dutiful resignation displayed by a harried parent explaining the self-evident to an inquiring child. "What else would you expect them to do under the circumstances?" – they seemed to be asking. Obviously, if a people do not have a constitution – or, at any rate, a satisfactory one – they supply the need by drawing one up.

To have or not to have a written constitution was hardly an open question to my class. It had long since been settled, and indeed they could not readily imagine a time when it had been open. My students, of course, are informed by a well-established tradition. What is astonishing, however, is that it does not appear to have been an open question

Dr. Carson is Professor of American History at Grove City College, Pennsylvania.

Many readers will recall his 1962 series in THE FREEMAN, "Individual Liberty in the Crucible of History." That series constitutes a major part of the book, *The Fateful Turn*, available from the Foundation for Economic Education, Irvington-on-Hudson, N. Y. (256 pp. $3.50 cloth, $2.00 paper.)

Illustration: National Archives

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among Americans in 1787 or 1788 either. One seeks in vain in *The Federalist* for any lengthy justification of a written constitution. All sorts of objections were raised to the Constitution which had been recently drawn at Philadelphia, but no one appears to have questioned seriously the propriety of having such a document.

One might suppose from this that it was an established custom for a country to have a written constitution. Yet this was not at all the case. No major country at that time had any such instrument. Men did, of course, refer to the British constitution, but in the later American sense it was not a constitution at all. It was rather a combination of established procedures, forms of organizations, customary usages, habitual relationships, plus some written acknowledgments of rights and privileges. So far as other great countries such as Spain, France, Russia, Prussia, and Austria were concerned, most of these intangible procedures, customs, and forms had fallen into disuse or been abolished. The seventeenth and eighteenth centuries were periods of the rise of strong monarchs who ruled more or less despotically. If Americans had followed prevailing practice, they would have sought a prince with some hereditary claim to rule and proclaimed themselves his subjects.

Apparently, here is a contradiction. On the one hand, Americans in the 1780's acted as if the adoption of a written constitution were an established tradition. On the other, the usual practice in the world ran counter to this. There is, as I have implied, a historical explanation which disposes of the apparent contradiction.

Form vs. Substance

But before attempting to make it, it may be helpful to draw a distinction between two aspects of a constitution: the *formal* and the *substantive*. In the formal sense, a constitution refers to the organization of a government, the procedures and offices through which it operates, and the relationships among the organs of government. It follows, then, that all peoples living under a government have a constitution of sorts, whether written or not, whether imposing severe limits or not, and whether recognized as such or not. In the substantive sense, a constitution confers powers, recognizes rights and privileges, imposes limits, contains prohibitions, and constitutes a higher law. It is true that the formal and substantive may be intertwined in an actual constitution. Thus, in the United States Constitution the formal di-

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vision into three branches carries with it a substantive limitation upon the powers of each by check and balance.

Nonetheless, it is on the substantive side that the uniqueness of our constitution appears. The forms it prescribes were somewhat original, but having them written out was more so. By having a strict enumeration of powers, it had no antecedents to my knowledge, if the American states be excepted. That since 1787 many countries have produced and adopted such instruments should not obscure the fact that the American one was frequently the model. In its thoroughness and completeness, it stood alone in its day. By limiting and checking the powers in order to protect the liberty of the citizen against government, it made a signal breakthrough in human endeavor. Governments have usually been formed either by conquest or by a slow growth over long periods of time. It was an audacious thing for men to meet in convention and draw up a *new* instrument of government.

Why, then, if it was so original and unique, did Americans not debate and challenge the action? Why were they of one accord in desiring a constitution? The answer is to be found primarily in American history, not in world history. There was, of course, already an American tradition of constitutionalism in 1787. The Founding Fathers had been convened to propose changes in an existing instrument of government – the Articles of Confederation, itself the first American constitution. The thirteen states already had constitutions of their own.

And back of these lay profound traditions and beliefs which gave impetus to the forming of constitutions. The sources of constitutionalism can be reduced to three heads: (1) historical precedents, (2) belief in Higher Law, and (3) belief in limited government and individual liberty.

Historical Precedents

The historical precedents for constitutionalism do indeed antedate the American experience. There were the laws promulgated by Solon and Lycurgus in Classical Greece. One may read the Funeral Oration of Pericles to discover the consciousness of a constitution by which order and liberty are promoted. Above all, the Founding Fathers had in mind the example and constitution of Rome. Here were to be found the separation of power into branches of government. There were the Twelve Tables of the Law, and the deep sense of government by

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law in the Roman Republic. There were the great English precedents also: the Magna Carta, the Petition of Right, and the Bill of Rights. None of these had the completeness of the written constitution of 1787 in America, but they were precedents of which our ancestors were aware.

Yet these were precedents known to men of learning throughout Western Civilization, and they had not produced written constitutions elsewhere. Of course, the break from England had offered the Americans the opportunity to start afresh. But it was their American experience of the past 180 years that had prepared them for the undertaking, and that made the drawing of constitutions second nature to them.

Colonial Charters

Colonies were usually founded in America on the basis of contracts, compacts, or charters. Even the joint-stock company, the usual means of financing the early colonial ventures, was a contractual relationship among investors secured by a charter from the Crown. As it has been described, a "typical joint-stock charter of this time gave the company a name and a formally recognized legal position. . . . The charter usually vested control in a council, the original members of which were usually named in the document. . . . Sometimes the charter provided for a governor as the head of the company, in which case he was chosen by the council, usually from its own membership."[1] All stockholders met periodically in a general court for the purposes of elections and deciding questions which may have arisen. This is precisely how the Massachusetts Bay Colony was governed in its early years, and it provides a part of the basic pattern of colonial government. This was, it should be noted, government based upon written charters (i. e., constitutions).

Another ingredient in the formation of the constitution idea was the Puritan covenant. The covenant was an agreement voluntarily entered into among a group of people before God to live according to his commandments. Among the colonies founded upon this basis were Plymouth, Providence, and New Haven. The character of these is made clear in the introductory words of the most famous, the Mayflower Compact: "We whose names are underwritten . . . Do by these Presents, solemnly and mutually in the Presence of God and one another,

[1] Alfred H. Kelly and Winfred A. Harbison, *The American Constitution: Its Origins and Development* (New York: Norton, 1955), p. 9.

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covenant and combine ourselves together into a civil Body Politick. . . ."[2]

An even more striking example of constitution making is the Fundamental Orders of Connecticut, joined into by the inhabitants of three towns in 1639. They declared that in keeping with the requirement of the word of God "[we] do therefore associate and conjoin ourselves to be as one Public State or commonwealth; and do . . . enter into combination and confederation together, to maintain and preserve the liberty and purity of the gospel . . . ," and for the making of civil laws.[3]

These contracts, charters, and compacts were sometimes subject to revocation or change over the years. Yet most of the colonies had some such document, and it served as basic evidence of their rights and privileges, to which they turned from time to time when these were threatened. Thus, Americans became habituated to written constitutions.

Belief in Higher Law

But constitutionalism was much more than a habit. It was more, too, than a formal tradition that had taken shape over the centuries. It was a substantive tradition. Undergirding it, buttressing it, giving it impetus and meaning was the belief in a Higher Law. This belief, at its deepest, holds that man does not make law; rather, he articulates pre-existing law and gives it particular applications. There have been differing views as to how this law is discovered, as to what it consists of, but it is of the essence of substantive constitutions that such law exists. If a constitution does not embrace this Higher Law, and is not builded upon it, it has no reason for existing.

It should be clear that the Founders considered the United States Constitution in this light. Alexander Hamilton, in *The Federalist* number 78, says: "A constitution is, in fact, and must be regarded by the judges, as a fundamental law." Again, "in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing . . . teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former."

[2] *Ibid.*, p. 17.

[3] Verna M. Hall, ed., *Christian History of the Constitution of the United States* (San Francisco: American Christian Constitution Press, 1960), p. 253.

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This is precisely what the Supreme Court did in *Marbury* vs. *Madison* in 1803. The crux of that decision is the recognition of the Constitution as the Higher Law. The case and decision are worth recalling. William Marbury had received a last minute appointment as justice of the peace by President John Adams, but his commission was not delivered. The incoming Secretary of State, James Madison, would not deliver it. Marbury went directly to the Supreme Court for relief, as the Judiciary Act of 1789 prescribed. John Marshall, in the decision for the Court, denied the petition. The grounds: the Constitution names specifically the instances of the original jurisdiction of the Supreme Court, and this was not one of them. This, as he saw it, brought an act of the legislature into conflict with the Constitution. In such a case, he maintained, the Court is bound by the superior rather than the inferior authority. Thus was legal standing given to the view that the Constitution embodies Higher Law.

The English Tradition

There were three main sources of this tradition of a belief in Higher Law in America. The first of these was the conception of the laws of England as constituting a higher law. Thus, the proprietary charter of Maryland specified that "laws be made with the consent of the freemen and agreeable to the laws of England." Laws passed in the colonies were, from time to time, subjected to review in England, and some of them were nullified. English law, too, was thought to stand upon a foundation of Higher Law. Kings and parliaments did not *make* law, according to the medieval tradition; they *discovered* what was the law and promulgated it. This was the customary law which became, by recognition of the monarch, the common law for all England.

Undoubtedly, deep and subtle justifications could be made for considering that which had come down by usage as Higher Law. But it must have drawn much of its force at the time from the general veneration of the old and long established. Coming into the Modern Era, the Higher Law was thought to be derived from God, either directly through revelation (and the promulgation of those in authority, if one accepted the Divine Right of Kings) or indirectly by way of natural law.

William Blackstone, in 1765, stated this view of the Higher Law succinctly. "Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to

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contradict these . . . . And herein it is that human laws have their greatest force and efficacy: for, with regard to such points as are not indifferent, human laws are only declaratory of, and act in subordination to the former." He gives as an example the matter of murder. "Nay, if any human law should allow or enjoin us to commit it, we are bound to transgress that human law, or else we must offend both the natural and divine."[4] There was, then, in the English tradition a fully developed belief in the Higher Law.

Higher Law in America

Americans continued, developed, and gave their particular articulation to this tradition. The second source for a belief in Higher Law has already been indicated from Blackstone; that is, that we have it from God by revelation. It is needful only to show that it was a belief congenial to Americans also. Nathaniel Ward, writing in the early seventeenth century, declared: "Moral laws, royal prerogatives, popular liberties are not of man's making or giving, but God's. Man is but to measure them out by God's rule: which if man's wisdom cannot reach, man's experience must mend."[5] Elsewhere he says, "The truths of God are the pillars of the world whereon states and churches may stand . . . ."[6]

In the middle of the eighteenth century, Jonathan Mayhew said: "We may safely assert . . . that no civil rulers are to be obeyed when they enjoin things that are inconsistent with the commands of God. . . . All commands running counter to the declared will of the supreme legislator of heaven and earth, are null and void: and therefore disobedience to them is a duty, not a crime. . . ."[7] James Madison, in *The Federalist*, number 37, remarking upon the fact that so many difficulties had been surmounted in the Constitutional Convention with such unanimity, was moved to this pronouncement. "It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution."

On the matter of the right of expatriation, Jefferson exclaimed: "We do not claim these under the charters of kings or legislators, but under the King of kings."[8] Alexander Hamilton, writing in

[4] *Ibid.*, p. 143.

[5] Perry Miller, ed., *The American Puritans* (New York: Doubleday Anchor, 1956), p. 107.

[6] *Ibid.*, p. 95.

[7] *Ibid.*, p. 140.

[8] Edward Dumbauld, ed., *The Political Writings of Thomas Jefferson* (New York: Liberal Arts Press, 1955), p. 190.

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1775, said: "Good and wise men, in all ages, have embraced . . . [this] theory. They have supposed that the Deity . . . has constituted an eternal and immutable law, which is indispensably obligatory upon all mankind, prior to any human institution whatever."[9]

Americans might have differed over how man can come to know the laws of God and to some extent what those laws are, but they were in agreement that there was such a Higher Law. In order to demonstrate this, I have passed over for a moment a great shift in emphasis which had taken place. In the early seventeenth century, most Americans who thought about it would have agreed that they knew God's laws through the revelations contained in the Bible. More and more men were coming to believe in the eighteenth century that we know God's laws through a study of nature in which they have been implanted – that is, that natural law is the Higher Law. The belief in natural law as Higher Law is the third source of the American tradition.

In this latter view, we come to know it through a study of the universe and by the use of reason. John Wise, writing in 1721, made this statement of it: "For that all law, properly considered, supposes a capable subject and a superior power; and the law of God which is binding is published by the dictates of right reason as other ways. 'Therefore,' says Plutarch, 'to follow God and obey reason is the same thing.' But moreover, that God has established the law of nature as the general rule of government is further illustrable from the many sanctions in providence. . . ."[10]

Thomas Paine, with his usual facility and absolute reliance upon rationality, carries this position to a logical extreme. *"The word of God is the creation we behold;* and it is in *this word,* which no human invention can counterfeit or alter, that God speaketh universally to man. . . . It is only in the *Creation* that all our ideas and conceptions of a *word of God* can unite."[11] But Paine's extreme view should not be permitted to obscure the more usual position. It was that there is a Higher Law, stemming from God, and known to man by revelation, by experience, and by science.

Individual Liberty

The other major source and foundation of American constitu-

[9] Richard B. Morris, ed., *Alexander Hamilton and the Founding of the Nation* (New York: Dial, 1957), p. 9.

[10] Miller, *op. cit.*, p. 126.

[11] Thomas Paine, *The Age of Reason* (New York: Liberal Arts Press, 1957), pp. 24-25.

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tionalism was the belief in limited government and individual liberty. The substantive purpose of a constitution is to secure the rights of men under it. The formal purpose is to provide order and stability within which these rights may be enjoyed. Implicit in the business of making constitutions is the belief that governments are a major threat to human liberty, however necessary they are to order and stability.

The great documents which served as precedents for the United States Constitution contain eloquent proof that they have as their purpose limiting government and recognizing liberty. Thus, the Magna Carta says, "We have also granted to all the freemen of our Kingdom, for us and our heirs, forever, all the underwritten Liberties, to be enjoyed and held by them and by their heirs, from us and from our heirs."[12] The English Petition of Right of 1628 "demanded that 'no man hereafter be compelled to make or yield any gift, loan, benevolence, tax or such like charge, without common consent by Act of Parliament,' and that there should be no imprisonment without cause shown, no enforced billeting of soldiers, and no martial law in time of peace."[13] In like manner, the charter by which Virginia was founded declared that those who should betake themselves to the New World were granted "all Liberties, Franchises, and Immunities . . . as if they had been abiding and born within this our Realm of England, or any other of our said Dominions."

This same character of limits and recognition of liberties can be seen in the Massachusetts Body of Liberties, promulgated in 1641. "No mans life shall be taken away, no mans honour or good name shall be stayned, no mans person shall be arested, restrayned . . ., nor any wayes punished . . ., unlesse it be by vertue or equitie of some expresse law of the Country. . . ."[14] Regarding the state constitutions adopted after the Declaration of Independence, one history says: "All the constitutions continued the office of governor, though most of them denied the holder of this position the bulk of the executive powers he had enjoyed in colonial days. All of the new documents . . . included a bill of rights. . . ."[15] The Articles of Confederation, the first constitu-

[12] Reprinted in Eugen Weber, ed., *The Western Tradition* (Boston: Heath, 1959), p. 194.

[13] W. E. Lunt, *History of England* (New York: Harper, 1956, 4th ed.), p. 412.

[14] Hall, *op. cit.*, p. 258.

[15] T. Harry Williams, *et. al.*, *A History of the United States*, I (New York: Knopf, 1959), 142.

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tion of the United States, severely limited the government it established, providing that "nine states must agree before Congress can take any important action," and that no changes should be made in the Articles unless agreed to by Congress and ratified by every state.

The Constitution of 1787 incorporated the essence of limited government in its features, and with the addition of the first ten amendments gave broad protections to the individual against government. The government was limited formally by separating it into three branches and making an enumeration of the powers of each of these, by reserving certain of the powers to the states and to the people, and by entwining the branches in action so that they must work together in order to act. Substantively, it was limited by denying certain powers to it. For example, the unamended Constitution contains such provisions as these: "No Bill of Attainder or ex post facto Law shall be passed." "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . . ," and so forth. The Bill of Rights more specifically prohibits governmental intrusion upon the liberties of individuals.

The above, in the main, is an outline recapitulation of the traditions which, when united, form the American constitutional tradition. In view of this, it was not unusual that Americans should have met to draw up a constitution. With such traditions and beliefs — historical precedents, Higher Law, compacts and contracts among the people for civil action, individual liberty and limited government — it would have been surprising had they done otherwise. Constitutionalism is itself the centerpiece of the American tradition.

But, as I pointed out in the first article of this series, there have been not one but three traditions in this country: the authoritarian, the American (or liberal), and the makings of a collectivist. Constitutionalism in America emerged from resistance to or limitation upon the authoritarian and is being altered and diminished currently by collectivism.

Government by Law, Not by Men

Constitutionalism itself was always liberal in tendency, but many of the great precedents for it in the Anglo-American tradition come from an authoritarian setting. The Magna Carta was an attempt to limit the arbitrary authority of the king, as was the Petition of Right. Colonial charters were grants of the monarch, arbitrarily given to companies and

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individuals, conferring monopolies and special privileges, and presumably revocable at his pleasure. Yet the rights of Englishmen had deeper roots than the arbitrary authority of a man – or, for that matter, of a parliament – and when the English government ignored them, the colonists revolted. They based their revolt on a Higher Law. As Jefferson put it, they were the "laws of nature and of nature's God." On the basis of these laws, men "are endowed by their Creator with certain unalienable rights; that among these, are life, liberty, and the pursuit of happiness."

Thus had Americans gone beyond the rights of Englishmen to the rights of man. The Declaration of Independence is literally and symbolically the rejection of the last vestiges of a government of men. It explicitly prepares the way for a government of law. Arbitrary authority had become ever more hateful to Americans. For decades they had been devising ways of circumventing the powers of royal governors sent upon them. Attempts to regulate their trade had met with subtle and large-scale evasion. They protested restrictions placed upon them. It was a noble dream of theirs that they should establish governments of law.

Constitutionalism was fully consonant with individual liberty. Indeed, as I have suggested, substantively it had as its aim the protection of individual liberty. The period from 1780 to about 1914 in America was one of the great ages of mankind for human liberty. Indentured servitude vanished, and Negro slavery was abolished; most, if not all, of the legal restraints upon liberty were abolished. American constitutionalism was profoundly a part of the American liberal tradition. But I oppose it not to conservatism, for constitutionalism was equally and as profoundly conservative. It was based on an age-old tradition; the American constitutions were based upon experience broadened by the study of history and upon reason chastened by piety. It is arbitrary authority vested in men, not lawful authority derived from Higher Law, to which the American liberal tradition was opposed.

Liberalism Perverted

But "liberalism" in the twentieth century has been largely transmuted into collectivism. Those who style themselves liberals now work to remove limitations upon governmental action, applaud concentrations of power, favor "government by men" as it evinces itself in boards and commissions, and propose solutions to problems by collective (i. e., governmental) ac-

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tion. In short, limited government and individual liberty are deterrents to these new liberals. Collectivism is profoundly anticonstitutional, in a much more complex and profound way than the older authoritarianism was. Kings could continue to occupy their thrones after their authority had been limited. But collectivists cannot "succeed" until they can bring the whole weight of government to bear upon problems.

This is so because they favor a planned economy and society. They must concentrate power in order to effect their economic order. States' rights, separation of powers, enumerated powers, and constitutional prohibitions prevent this power concentration. Individual liberty must eventually be sacrificed also. For, as F. A. Hayek has said, "The authority directing all economic activity would control not merely the part of our lives which is concerned with inferior things; it would control the allocation of the limited means for all our ends. And whoever controls all economic activity controls the means for all our ends and must therefore decide which are to be satisfied and which not."[16]

The thrust to collectivism in the twentieth century, then, has been accompanied by an assault upon constitutionalism. The belief in historical precedent and tradition was undermined by a progressivism informed by a Darwinism to which the past was substantially dead. The belief in a Higher Law was undermined by a humanism which admitted of nothing above the man-made and by a pragmatism which admitted of no hierarchical distinctions. The belief in limited government was undermined by proponents of a democracy in which the general will is always to prevail. Historians, such as Charles A. Beard, J. Allen Smith, and Vernon L. Parrington, denigrated the United States Constitution by describing it as a reactionary document produced by vested class interests. At the more popular level, the Constitution was said to be outmoded. It had been created for an agrarian society and was hardly adequate to the exigencies of an industrial one. Limits on government were all very well when colonists wrestled with monarchs or when the franchise was severely limited. But when the people rule, why should their powers be limited?

Change by Amendment

There have been some amendments to the Constitution – notably the fourteenth and sixteenth

[16] F. A. Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944), p. 91.

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– which have altered the character and limitations of constitutionalism. But the amazing thing is how few amendments there have been in a time when vast substantive changes in governmental action have taken place. Since 1920 there have been only three amendments to the Constitution, two of these adopted in 1933. Except for the twenty-first, which repealed the eighteenth, these have dealt strictly with the formal side of the Constitution. The twentieth changes the dates of presidential inaugurations and the meeting of Congress, among other things. The twenty-second limits Presidents to two terms. The Constitution is still there, very much as it was, yet these United States move nearer and nearer to unlimited government.

How has this happened? To describe it in detail would require volumes. They should be written. In the meantime, however, the outlines of it can be suggested. The Constitution is reinterpreted by the courts. It is conceived of as granting power to provide for the general welfare, not as limiting the use of power. Increasingly, courts and elected officials ask the pragmatic question of what the effect of an action will be rather than whether it is authorized by the Constitution or not. Indeed, the notion of referring an act to or placing it beside the Constitution to determine its constitutionality has been laughed out of court as the "slot machine theory" of interpretation. "The Constitution is what the Supreme Court says it is," we are told. And if the court ignores the Constitution's substantive limitations, it ceases to impose limits.

The Foundation Stands

There is still a tradition of constitutionalism alive among the American people. It still promotes the acceptance of the decision of courts. How much longer it can survive this assault is anyone's guess.

But is the United States Constitution not outmoded? What excuse is there for imposing limits upon popularly elected officials? Have conditions not changed so drastically that what was formerly proper is no longer needed? Should the hands of the President be "tied" by onerous restrictions? What our government needs, we are told, is flexibility to deal with the multiple problems which confront us. Perhaps these questions can be answered with others. Is liberty less desirable today than it was in 1787? Have men been perfected to the degree that they can be trusted with unlimited power? Are governments no longer apt to oppress the citi-

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zenry? If the answers to these questions are negative, then constitutionalism is as viable as it ever was.

Indeed, times have changed, and the Constitution is no longer adequate to the twentieth century. Governments have devised means of oppression unknown to our ancestors. New restrictions need to be conceived to protect the citizen in his life, liberty, and property. But for this the original Constitution can be built upon. This would be profoundly in keeping with the American tradition of constitutionalism. ◈

• *Next: Of Republican Government*

IDEAS ON LIBERTY

A Lesson from Rome

IN A LITTLE TIME, when he [the emperor Octavius] had allured to his interest the soldiery by a profusion of largesses, the people by distributions of the corn, and the minds of men in general by the sweets of peace, his views grew more aspiring. By degrees, and almost imperceptibly, he drew into his own hands the authority of the senate, the functions of the magistrates, and the administration of the laws. To these encroachments no opposition was made. The true republican had perished, either in the field of battle, or by the rigour of proscriptions: of the remaining nobility, the leading men were raised to wealth and honours, in proportion to the alacrity with which they courted the yoke; and all who in the distraction of the times had risen to affluence, preferred immediate ease and safety to the danger of contending for ancient freedom. The provinces acquiesced under the new establishment, weary of the mixed authority of the senate and the people; a mode of government long distracted by contentions among the great, and in the end rendered intolerable by the avarice of public magistrates; while the laws afforded a feeble remedy, disturbed by violence, defeated by intrigue, and undermined by bribery and corruption.

The Annals of Tacitus, Book I, Chapter II

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HOW NEWSPEAK CHANGES PLAIN WORDS

LAWRENCE FERTIG

IN George Orwell's famous novel, *1984* – a frightening account of life under an ironfisted communist tyranny – the historical record of the past is periodically rewritten by the ruling commissars. They order some events completely expunged from history and others radically altered to suit their propaganda objectives. In addition, the meaning of important words is fundamentally changed under a system of "Newspeak." So people come to believe that "war is peace," "freedom is slavery," "ignorance is strength."

This kind of brainwashing can't happen here, of course – as long as constitutional guarantees of free speech are enforced and economic power is not concentrated in Washington. But it is interesting to note how the Orwellian technique has been adopted even for our times.

The word which New Frontier officials and economists would like to expunge or completely change is the plain, simple word "deficit." If they are successful, will the words "federal deficit" some day be defined in economic textbooks as "fiscal responsibility – a method of achieving prosperity for everyone"?

In my column last November I pointed out the first significant effort toward this planned objective by Professor Emeritus Alvin H. Hansen of Harvard University, who for more than a generation has urged more federal spending and bigger deficits. In an essay published last year he said: "As a nation we Americans firmly believe in the expanding use of credit by families, businesses, and even state and local governments. *But for some strange reason we refuse to view with the same munificence deficit financing by the government.*"

Hansen adroitly concealed the vast difference between business borrowing and government deficits. Corporations borrow to improve productive facilities, to produce more and better goods or services, to operate more efficiently and thus (they hope) to make a profit. The government borrows in large measure in order to increase federal payrolls, to grant more subsidies (like farm subsidies),

Mr. Fertig is the author of the book, *Prosperity Through Freedom,* and economic columnist for Columbia Features, Inc. This article is from his column of February 24, 1963.

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to give more aid to foreign nations, or to make armaments like missiles (essential as the last item may be). Business borrowing encourages economic growth and future employment and improves everyone's standard of living. Government deficit-borrowing certainly does not have this effect. Business borrowers are subject to the laws of the market. They must earn a financial return on borrowed money to remain creditworthy. The federal government is under no such restriction. Finally, the federal government can repay the loan by printing money. Business officials would go to jail for that.

After Hansen stated the main theme, others quickly followed. A few weeks ago, Walter Heller, Chief of the President's Council of Economic Advisers, deplored the public's attitude toward deficits and ascribed it to our "basic puritan ethic." Plainly this ethic is old-hat, according to him, and encourages "a failure to understand" the importance of government deficits. Another government official, Budget Director Kermit Gordon, told a Senate committee in January that "a balanced budget would lead to increased unemployment, higher taxes, and a general economic decline." Coming from a man who is supposed to encourage fiscal responsibility such a statement has frightening implications.

It remained for Yale Professor James Tobin, formerly a member of the President's Council of Economic Advisers, to make the boldest statement and the biggest howler. Recently, in an article in the *New Republic* advocating big government deficits he said: "If you would like the federal deficit to be smaller, the deficits of business must be bigger."

By "deficits of business" the Professor does not mean business *losses*, the commonly accepted meaning; he means business *borrowing for productive purposes* — a twisted interpretation and a pure exercise in semantics. Also note that he equates wasteful government spending for any purposes with business borrowing for the more efficient production of goods and services for the public. He equates *spending* with *investment*. He does not allow for the fact that if government spending were cut and government deficits eliminated, the burden on business and on the consumer would be less and the chances for economic growth would be greater.

This attempt to change the meaning of a simple word is being thwarted by the common sense of the American public. They know that a deficit is a deficit is a deficit. ◈

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JOHN C. SPARKS

GHOST TOWNS

THE BOARD OF DIRECTORS of our Chamber of Commerce had met to discuss the city government's proposal to participate in the federal urban renewal program. A fellow-director turned to me – not in the tone of inquiry, but more to nail down his argument: "Would you stand by and see our business section become a ghost town?"

The question probably was misdirected because I happen to be fond of ghost towns – figuratively speaking. Many features of the twenties and thirties, then alive and vibrant, are today merely ghosts of the past; and my fondness for them arises precisely because they are ghosts.

Let me explain. A livery stable, thriving at the time I was born, went out of business six years later. The automobile had displaced the horse. The reason why I am fond of that ghost is that its owner did not apply to Washington for livery stable renewal.

The livery stable is but one of the ghosts of the past. Ghost canals wind through Ohio and other parts of the country, no longer serving as a means of transportation. There are ghost lamp factories, ghost icebox factories, ghost streetcar tracks embedded in many city streets, ghost movie houses, and ghost back-lot rest-rooms all outdated by electric lights, modern transportation, home refrigeration units, television, and inside plumbing.

In business, there are ghosts of early office equipment – awkward typewriters, hand-cranked calculating machines, and laborious

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Mr. Sparks is a business executive of Canton, Ohio.
Illustration: A. Devaney, Inc., New York.

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duplicating facilities that would make one barely legible copy every four or five minutes – in contrast with modern electronic data processing equipment, high-speed duplicating processes, electric typewriters, and calculators.

How sympathetic would we be to the efforts of yesteryear's office equipment manufacturer to keep his outdated products on the market through a government renewal program? Would we deliberately preclude better quality and lower costs in the products we buy, by subsidizing obsolete business methods and facilities? Not likely, especially when we have a choice in a free market. Yet, in today's changing urban areas when the owners of downtown properties attempt to salvage them through artificial and ineffective government urban renewal programs, it is as though livery stable owners of the early twenties were seeking federal aid to keep in operation the horse and buggy.

As it happened, not many livery stable owners were utterly consumed under the cruel blow of economic defeat. Many converted their buildings and operations into uses consistent with the changing consumer demand for services and products.

A sign of our time is the oratorical and almost sacred crusade to save physical properties in the formerly bustling downtown sections of our cities. Another sign, cousin of the first, is the fervent chamber-of-commerce endeavor "to bring industry to our city."

Justifiable Pride

I wish it understood that I enthusiastically support the owners of property who profit through the free choice of willing customers. I cheer them and admire their ability to serve mankind with their valuable products and services. Particularly, my praise goes to those downtown owners who recognize that their prosperity in the past came from economically filling the wants of their customers and who now roll with the changing times and continue to serve customers well and profitably. To these merchants who have retained and kept up-to-date their competitive skill – rather than running to Washington for aid – goes my genuine admiration.

I also want it known that I have pride in my own community, the people I know, the companies whose home offices are here, the local athletic teams, the hometown girl who made good in the Metropolitan Opera, the nation's President who came from this city, the excellence of the fine arts, the theater, and other civic achievements. I want my city to have prosperous business, cultural,

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and recreational activities; let there be no mistake about that.

But, a city prospers through strict adherence to old-fashioned basic principles. If we let those principles become ghosts, then ours is indeed a ghost town.

How Cities Grow

In order to obtain a clearer perspective, let us reflect on how cities got to be cities in the first place. Usually, there were economic benefits to be derived in the general locality: potential port facilities, crossing of two railroad lines, nearness to special raw materials, and various other factors. Some communities have numerous economic assets, while others develop more precariously with a single attraction. Various mining towns of the West are "ghostly" examples of communities whose single purpose no longer exists.

A Southwestern oil town lost 90 per cent of its 25,000 population when reserves of oil in the vicinity declined. Recently, the remaining 10 per cent, the uneconomic leftovers in that oil town, sought recovery of their lost property values through the federal government and were awarded funds taken from others all over the country.[1]

Cities are not ordained to be – they are born of the economic decisions of many persons who have decided to live there rather than somewhere else. These persons, one can be certain, were not selecting the locality on some willy-nilly, illogical basis. A job was available, business prospects were good, or a service was needed. Why else would people decide to live in a smoky, smelly industrial city? Cities have grown because there were sound economic reasons for people to live there.

On the other hand, the process can and does reverse itself. In some instances the raw materials simply give out. Examples are abundant, however, where the movement toward other locations has been pushed along by the *unwise actions of local citizens.* Occasionally, an individual may act unwisely to the detriment of his community, but this is not the sort of thing that would be imitated by very many people. When whole communities act unwisely, the cause invariably may be traced to those organizations that have the power to coerce their fellow citizens.

Governmental Forces Lead to Community Deterioration

After thoroughly examining the possibilities, including labor union activities and the nature of union power, one may conclude that in

[1] "Small Towns Scramble To Get Slum Removal Aid from Uncle Sam," *Wall Street Journal*, July 3, 1961.

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reality there is only one organization – the government itself – with the coercive powers in question here. People acting through the power of their local government (the same thing applies to states experiencing the exodus of industry) take actions that detract from their economic assets. Ever-increasing tax rates and new forms of taxation are common examples of unwise action. The excuse always includes the alleged growing needs of the community, but never explained is why the functions of police and fire protection, road maintenance, and public education forever require a higher *percentage* of the total wealth and earned income.

And the more the community government interferes with the private affairs of its citizens, the less effectively it fills the proper police function of protecting the life, freedom, and property of its citizens. A community may acquire a reputation as an undesirable labor market, for example, due to unruly labor organizations that successfully defy the rights of individuals – owners of industrial plants, other citizens, and even their own members – while the police of the community do nothing to stop such unlawful practices.

Thus, unwise community action makes the community economically unattractive to businesses already located there as well as to those contemplating the area for plant expansion or decentralization.

People Change

Communities themselves evolve; the habits and desires of the people change. It is evident that many people now find the suburbs and the countryside more to their liking than the city surroundings they preferred two or three decades ago. These are independent economic decisions; and merchants must react competitively if they are to continue to serve their customers well. There is no magic line (municipal corporation limit) within which exists a sacred right to a perpetually prosperous life for property owners, merchants, or even city officials themselves.

Cities were a result of people coming together. Today there is a new concept of *de*centralized living. Furthermore, those who now live outside the "magic" corporation lines are not living without police and fire protection as is sometimes implied. These services are often obtained exactly to the extent that each property owner or resident wants and contracts for them. Shopping centers further illustrate self-containment, as they usually construct their own streets and sidewalks and provide police protection – not at public

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expense, but at the expense of those who use them. Indeed, the evolution of shopping centers is in the direction of complete community services, including the recreational and cultural, all provided by individuals through free exchange.

Once a community embarks on a wrong course, it encourages the exodus of established business and population and discourages the coming of new people and new industry. Increased restrictions and taxes, coupled with failure to protect life and property in the community, spell trouble ahead.

Paradoxically, the trouble feeds upon itself through the frantic adoption of fallacious remedies. Rising taxes start the decline of values and the exodus of industry and people. Then planners condemn additional properties, strangling any business life left in the community. Their sincere objective is to displace these "substandard" areas with "planned" modern apartments, thriving businesses, beautiful parks. And they expect the program to pay for itself through increased valuations and property taxes. They forget to explain why businesses and investors should be attracted by high taxes.

The next step is to seek federal aid, which usually requires a proportion of local matching funds. For such funds, many cities are turning to municipal income taxes, adding one more reason why people and businesses move away.

Artificial Lures

In recent years, we have seen increasing competition between localities to lure business. One device is to promise property tax exemption for ten to twenty-five years. Sometimes the communities will construct and lease factory buildings at bargain rates. But businessmen tempted by such attractions might well speculate as to who will foot the bill for other newcomers after one's own company has had the initial "free ride." An economy based on subsidy leaves much to be desired.

The distraught efforts of community leaders to save their towns from unfavorable economic decisions sometimes produce unusual results. One small city, having lost its largest manufacturer, sought to bolster its local economy by way of a federal housing project. Construction workers and supply companies may benefit temporarily, but what real reason can there be for adding to the surplus of housing in a community that people are leaving to find jobs.

Another city's leaders believe they have found a way out. Their state prohibits dog racing; so they have asked for an exception

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that would give them a monopoly. This could prove very profitable as a tourist attraction – until another community cries for its equal rights!

These are but samples of the ludicrous measures by which civic leaders strive to stem the receding economic tide in their home towns; and all they accomplish is to speed the decline. Government action affords no solution to the problem, unless the action be to repeal restrictions and taxes. When the promise and threat of government urban renewal hangs over a community, correct economic decisions about investments and entrepreneurial risks are postponed, both downtown and in the suburbs.

What of the Future?

Communities develop around the common economic interest of many people, and communities will change as those interests change. Attempts to start at the wrong end of the process are doomed to unhappy results. No government planner can anticipate accurately the economic choices of tomorrow, next week, next month, or next year – not even for one individual, and certainly not for an entire community. The result is bound to be a ghost town economically, no matter how sturdy its physical construction from the ill-gotten federal funds.

If new industry is to be attracted to an area, there must be sound economic reasons: availability of peaceful and intelligent workmen; access to raw materials and to markets; police protection of peaceful citizens and private property, but otherwise a minimum of government intervention and taxation. If a community will offer these attractions, display a refreshing attitude not to meddle in business affairs, add a dash of patience, and let these facts be known, new business will come. The market place works that way.

Give me a ghost town any day in preference to ghost principles. To attempt to perpetuate artificially the economic decisions of the past is to abandon sound principles and deny all hope for further economic progress. And the sad result will be a ghost nation.

Subsidies for Ghosts

IF THE PEOPLE of an overpopulated community are subsidized with grants from the outside, regardless of the purpose for which the money might have been intended, they will not be encouraged to move to greener pastures or to develop the resources of their own area.

OSCAR W. COOLEY

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OUR UNIQUE ECONOMIC SYSTEM

BRADFORD B. SMITH

I GUESS at the very beginning I owe you a word or two of orientation because on this occasion I have planned to give myself the luxury of indulging in personal views — or theorizing, if you like — about our unique American economic system. It comes about this way: I happen to have been born in the last century and like many of my generation I grew up taking a lot of things for granted. I assumed, without bothering about the reason why, that individual liberty and private enterprise were our objective and procedure; that our government was our servant to be loyally supported rather than our master to direct and support us; that laws were protections not oppressions; that industry, thrift, self-reliance, and honesty were virtues; and that in this land we were both privileged and required to stand on our own feet without leaning on or being leaned on by others.

Some thirty years ago, under the stresses of the great depression, the origin and evolution of which no one at that time understood, the subject matter of public questions changed greatly. The questions were no longer about the best ways to achieve our destiny within this taken-for-granted framework of laws, attitudes, and institutions. The main question, instead, was whether the framework itself was all wrong and ought to be changed. It was whether, for example, charity should be governmentally rather than privately dispensed; should there be massive redistribution of income; should government con-

Mr. Smith, Economist, United States Steel Corporation, presented these views as an address before the Michigan State Conservative Club, East Lansing, Michigan.

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trol prices and wages; should it engage in production; could and should we spend our way out of the depression; and so forth. In short, individualism was challenged by collectivism.

A lot of people were thus put in a position where they had to do some researching as to whether what we had formerly taken for granted was something precious to be preserved, or whether it was proper and probable that individualism in America should be superseded in our time by some sort of socialism or collectivism. To get ahead of myself a bit, it seems less proper than it does probable that this transition is under way. We have already come far: In 1960, government – at all levels combined – took command through taxation over the distribution of about one-third of all goods and services produced, as against one-sixth thirty years earlier. And we are now so mired in inflationary debt and social commitments that one must wonder how we can continue on this course without inviting debt repudiation.

So what I have to say here is the recounting of some of the thoughts and observations accumulated in the years of that exploratory re-examination, and they are mostly of the kind one seldom finds mentioned in the economic textbooks.

Three Controlling Frameworks

I suppose that economics describes the behavior of people in earning their livings. So to establish some presumably common groundwork of understanding I start by proposing that human behavior is ruled, for the most part, by three overlapping circles or frameworks of influence. First, there is human nature itself – the things that are inside of people in terms of innate capacities, needs, and desires. Second, there is the outside physical world – the natural resources environment within which people find themselves. People act differently in different places. Third, there are the relationships which people establish between each other out of their customs and moral attitudes, codified into law, and enforced by the compulsions of government.

About human nature it should be immediately noted that man does not live by bread alone – and I will come back to that – but first there are some relevant things innate in so-called economic man.

Thus, each of us is born with a capacity for sensations which range from excruciating pain through feeling of discomfort, on up to satisfaction, pleasure and, indeed, ecstasy. More than that, man is capable of having anticipations of pleasure and pain which we regard as the emotions of hope

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and fear. These emotions extend even to contemplation of one's post-mortem status, and in so doing react in some measure to rule mortal behavior. Pleasure and pain, hope and fear, are what rule peoples' actions and inhibitions. They are the great and universal human motivations. No economic system can exist that does not honor that fact. Man's pain-pleasure, hope-fear scale of sensation and emotion is essential to his survival as a living organism and through it natural law is enforced on him. If, for example, he had no pleasure in satisfying his hunger, he would long since have become extinct; if fire gave him no pain, he would long since have become ashes; if he had no fear at the top of a cliff, he would soon have been dead at its bottom; if he had no hope of gain or fear of destitution, he would not toil and save and so he would either have been dead or, at best, remained a mere animal, scampering through forests hunting for edible nuts.

Man also has disinclination to toil. Put more brutally, he is born with a considerable capacity for laziness. But this also is a survival requisite, for if fatigue poisons failed to create disinclination to overexertion then man could well have torn himself to pieces in unchecked activity. All of us know some who have literally killed themselves through overexertion.

I suppose that it is out of these innate characteristics that economists long ago formalized the law of supply and demand. Man's hungers and wants which give pleasure in their satisfaction constitute the demand curve within him, and his disinclination to toil constitutes the cost or supply curve. Where the two cross then man, insofar as his innate characteristics are concerned, has achieved the maximum material happiness in the given environment.

You can illustrate this to your children at the dinner table some time. Let us say that little Sonny has had one piece of pie which he eagerly consumed. He may want another piece but not as much as he wanted the first piece. And there, by the way, is the economists' famous law of diminishing utility sitting right inside us. Mother asks Sonny if he wants another piece — to which he says, "Yes." She then tells him to go out in the kitchen and get it for himself, whereupon he says he does not want it after all, and if he is a sophisticated little fellow, he may comment that it is not worth the effort. Whereupon you can all have a laugh because he has achieved the point at which his internal demand and supply curves have crossed. The additional satisfaction to be had from

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the additional pie was balanced out by the dissatisfaction in the additional exertion required to secure it. He has achieved the balance point of maximum net satisfaction in the given circumstances.

Innate want plus laziness in constant conflict within us produce a survival balance, explain the endless pursuit of "something for nothing," foster invention, and underlie the economists' law of supply and demand. This is so basic that some have formally described it as the "Iron Law of Economics" in these words: "Man ever tends to satisfy his wants with the minimum possible exertion." If we would understand individualism, communism, and authoritarianism, and how one feeds into the other, we had better never forget that law. Our system exists in partial defiance of it, as I will show later.

There is one other thought I have about these internal supply and demand curves: No one knows in terms of *measurable* exertion or *measurable* satisfaction just what constitutes the maximum material happiness. But there is a means of achieving it, whatever it is, even if we cannot measure it or plan it. It is to refer the problem right back to the innate mechanism itself, just as in the case of Sonny and the pie. He was neither compelled nor forbidden to eat the additional piece; he was neither compelled nor prevented from getting it. Left free, he achieved the maximum net satisfaction in terms of his own wants and dislikes. So also could it be for any number of people if we make the utopian assumption that none of them would resort to fraud, theft, or coercion in their dealings with each other. Here then is what might be styled the biological basis for the leave-us-alone – the laissez-faire – philosophy of achieving maximum net satisfaction for a society. Could any social system dedicated to the "pursuit of happiness" achieve its objective in disregard of reliance on voluntary, noncoerced decision and action?

Collapsing Time

Next, I want to draw your attention to three things about human perceptions, and human actions in response to them, because to me they help to explain how people wishing to preserve liberty could nevertheless be beguiled into accepting totalitarianism. The first one I think of as "collapsing time in one's thinking"; the second I think of as "getting used to things"; the third I think of as the "threshold of action"; and about all of them I think they are very human and understandable.

About collapsing time in one's thinking, I suspect that all of you, if you but consult your own ex-

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perience, will recognize that the further off in time an event you perceive or anticipate may be, the less effect it has on your current attitudes, actions, and judgments. My personal illustration is a big bump I got on my head from a low pipe in my basement. For quite a while afterwards I remembered to stoop when passing under it. But as time passed, the influence of the perception – that bump on the head – dimmed; and so, sure enough, there came the day when, wham, I did it again!

As for minimizing the future consequences of today's deeds we have in illustration the famous saying, "After me the deluge." Modern-day alibis for minimizing future consequences in formulating current decisions for breaching a principle are sometimes phrased as, "I'll cross that bridge when I get to it," or "Let's be practical," or "Peace in our time," or "The end justifies the means." Prick up your ears and be vigilant when you hear them, even in high places.

I think this is important because, although the time diminution of a perception's effect on action is a protective survival characteristic as far as the individual is concerned, it is far less protective of any economic system not rooted in brute totalitarianism. Here is the reason: It is, of course, necessary that you as an individual should do the things today which will provide you with your breakfast tomorrow, as distinguished from your breakfast next year. After all, you have to get past tomorrow before you can get to next year!

But a stream of population is a timeless thing in this sense: If you take a section of it, you will find so many young people, so many middle-aged, so many old folks, and so on, and among them laughter and tears, gladness and sorrow. Take the same cross section years ago, or years hence, and you find the same things. There is turnover of the individuals, but the race itself flows on, reproducing each day the same characteristics. An act or deed done today may seem beneficial today, but have more than offsettingly evil consequences later on. It is human nature for the individual to minimize the later evil. But an evil done to a race of people or its institutions, is just as much an evil if it happens tomorrow or yesterday as if it happens today. It is not good to disregard the future consequences of today's deeds, despite the cynic's question of "What has the future generation ever done for us?"

Those who wish to think wisely about the establishment and maintenance of good economic systems

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or political institutions must learn to fight their own perfectly human tendency to minimize both the lessons of the past and tomorrow's consequences of today's deeds. I call it "collapsing time in one's thinking." That people mostly do not collapse time in their thinking has been observed in bitter words by Hegel. Santayana said it also, but in more kindly fashion. He said, "Those who do not remember the past are condemned to repeat it."

This helps to explain to me why history records the disappearance of one civilization after another, why it displays one tyrant after another, one war after another, and one inflation after another, such as the one we have been in for the past quarter of a century or more.

Getting Used to Things

The second thing about perception I wish to note is our tendency to get used to things and not notice them any more even if they are still there. Walk among roses and they smell nice; stay with them and you notice them no more. I suppose this also is a survival characteristic innate in the human being. Imagine, for example, the raving maniacs we would all be if we were continuously conscious of our clothes wherever they touched us! The characteristic is in us; we cannot change it. But it also opens the door to the camel's-nose-in-the-tent technique of overthrowing social orders. It means that a little infringement of principle in defiance of the lessons of history can be introduced, and there will at first be some indignation and resistance from those who can collapse time in their thinking. Then everybody gets used to it, and even if minority protests continue unabated, their effectiveness fades away like the smell of the rose. Then the next step can be taken.

An example that has achieved classic proportions is the progressive income tax. In 1913 when the amendment authorizing it was adopted, I imagine that not many people realized that Marx and Engels in the *Communist Manifesto* had urged, even demanded, steep progressive income taxation as a most effective and, once started, self-energizing means of creating eventual chaos and overthrow of the system of private property and individual liberty. The amendment's abrogation of a protective Constitutional principle and its potentiality for evil were indeed pointed out by a few but were disregarded, I think primarily, because the widespread expectation was that the rates would never be high. Indeed the first tax ranged in rates from 1

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to 7 per cent. Then people got used to it and, as Marx had predicted, it was increased again and again until today the minimum rate is 20 per cent and the maximum is over 90 per cent. The camel is indeed well into the tent and the damaging consequences to the innate human motivations on which our system depends are immeasurable.

The point is that if any such ultimate result had been envisioned in 1913, the enabling amendment would undoubtedly have been rejected; and yet today, because of the principle of getting used to things, there is little indignation around, despite the fact such extreme and selective taxtaking can be objectively justified only by embracing a harsh he's-got-it-let's-take-it philosophy akin to that of the burglar. It is not a good idea to let the camel get his nose into our tent.

The Threshold of Action

The third thing about perceptions I wanted to note is what I think of as the threshold of action. I can illustrate it quite briefly: I suppose that all of us have spent a night shivering in bed because it turned just cold enough to make us uncomfortable, but not quite cold enough to make us bestir ourselves to get another blanket. From such a cold night to a high tariff or to a labor, a product, or a political monopoly is not a far cry. Suppose someone – or a pressure group – found a way to steal a penny a day from each one of us. You might recognize it as stealing, but the tremendously human thing would be to do nothing about it. It would not get over your threshold of action. The stimulus would be too little. However, the aggregate of the tiny takes from each of us would constitute a most powerful incentive for the thief. He has big incentive; our resistance is too dispersed to be effective.

I guess I do not have to spell out in detail how whole economic or political systems can be altered or subverted simply by playing on the three characteristics of human perception I have noted: The idea is to rely on general inability to collapse time in one's thinking and play up some immediate seemingly good purpose as an excuse to get the camel's nose in the tent. But introduce it only to a degree that is below or at least not far above the threshold of most people's perception and action. Then let people get used to the presence of the nose and simultaneously give time for the effectiveness of initial protest to grow dim. Then introduce the camel's neck and repeat the process over and over until his whole ungainly form is in.

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I would guess that there is no way to oppose this process except as people establish and adhere to timeless principles and so bring the force of moral indignation to bear on deeds that are in themselves at the moment of little material significance to them. There is a precedent for, if recollection serves correctly, there was once a Boston Tea Party at which the camel's nose was recognized, resented, and repelled.

The Law of Variation

Thus far I have been speaking of certain survival characteristics of human beings that bear on economic and political behavior as though we were all the same. But though these characteristics are common to all of us, we are not alike. In talents, ambitions, capacities, as well as in physical appearance, we all differ. Darwin had something to say about it. I call it the Law of Variation. It and the Iron Law illuminate the nature of economic and political systems more than any other approaches I know.

We all know of the biologists' bell-shaped curves describing the probable distribution of a single characteristic in a population. There are a very few very tall people and a very few very short ones. The biggest number of us are just average, while the numbers of those of intervening heights diminish as the given heights approach the extremes. Of more pertinence to this inquiry is the way the normal distribution can become terrifically skewed when we are counting the instances in which rare characteristics are combined in one individual. Suppose we want a great orator who is also exceptionally healthy. There are relatively fewer people who have this combination than there are those who have one of the two things which make up the combination. Add next a great lust to dominate one's fellow man, and the number having all three characteristics is still smaller. Add an opportunity of social unrest, thus limiting the time incidence of our selection, and the wanted combination is aggregated in still fewer people. Add ruthlessness, irresponsibility, irreverence – and so we could go on to get a Nero or a Hitler.

My point is that even if the distribution of single characteristics is bell-shaped, the combinations of exceptional aptitudes in individuals which lead to exceptional performance may be rare – like the rarity with which a dozen pennies tossed together will come out all "Heads." For us this means that at any time, in any place, in any population there will always be some idiots and some geniuses,

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some sinners and some saints, some rich and some poor, some who earn very large incomes and some who earn very little, with a characteristic distribution of intervening incomes as, indeed, Pareto has shown. But most of all, for the purposes of this inquiry, it means there will always be a minority possessed of great desire to establish coercive control over and to exploit their fellow men, and possessed also of the special aptitudes to do so, if unchecked, by playing on the human motivations and perceptions in fashions such as I have sketched.

Natural Resources

So much then, for the time being, about the human nature framework of behavior. The other two frameworks of influence were: natural resources and social relationships. There is little that we can or need to say about natural resources. Man did not create them and all he can do in exchange for their presence is to thank God. It should be remarked that some of the spots on earth have greater natural resources than other spots, and that people live in both of them and almost endlessly make war over them. Other things being equal, the people with the richer resources will achieve a balance between the satisfaction of wants and the required exertion, which represents a greater level of consumption than that of people living in places that are less rich in resources. For the present purpose it is sufficient to note that, like human nature, natural resources are not to be changed. They can be observed, but must be accepted as they are.

The Social Framework

This brings us to the third overlapping circle of influence – the social framework – which I think of as the accepted customs, morals, institutions, and especially the political structure and laws of a society. Of the three frameworks this one alone is established by man and hence subject to his alteration and control. Only through the social framework a nation establishes is there opportunity for it to implement whatever aspirations it may hold.

Government in this connection is best regarded as society's necessary and monopoly instrument of compulsion or constraint. Unless one has some understanding of the nature and administration of compulsion, insight into the functioning of this third framework will be denied him. For compulsion is the central theme of political organization and hence of its influence on economic organization and activity. Nor can anyone have a workable idea about

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the meaning of individual freedom until he understands compulsion and the means of negating it in human relationships. So, how does compulsion work?

Compulsion

Human action, we have seen, results from people's pain-pleasure, hope-fear scale and from disinclination to exert one's self. Is there any possible way of "getting through" to the individual and compelling (not persuading, or inducing, or paying) him to do or not to do anything whatever, except as you can threaten to or actually introduce man-made pain or deprivation into that scale, or an additional exertion requirement into his environment? Can you *force* your neighbor to do anything *if he knows* that you cannot injure him in his person, good name, or property in any way? You can't, but government can because it is organized compulsion – power to deprive (fine), to imprison and kill, supported by an armed police force permitting no rival armed organization among the governed, ever "nipping in the bud," or "purging," such rivalry as treason before it can get started.

Organized constraint – or government – is necessary in any society because the Law of Variation tells us there always will be some sinners, some thieves, liars, and killers, who if not thereby restrained will themselves organize compulsion, in Al Capone style, into what one might think of as a gangster government. Quite aside from that, and supposing the purpose to be benevolent, the Iron Law and the Law of Variation tell us that organization of compulsion – that is, government – will quite naturally occur in any society. To me, the distinctions between social organizations and their resulting economic systems are best or, at least, most interestingly examined in terms of who holds the monopoly of constraint and for what purposes it is utilized or delegated. I think of such organizations as of three types: the authoritarian state, the socialist or communist state, and the individualist or voluntary society.

The Authoritarian State

In the authoritarian state a ruler and supporting class possess the monopoly of compulsion and use it to exploit the labors of the governed for their own gratification and benefit. The authoritarian state seems to be typical throughout history, the one to which deviations therefrom often revert as, for example, in the rise of prewar dictatorships in Europe and more recently in Cuba. There must be some deeply imbedded

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reason for this, and I think we find it in the Law of Variation and the Iron Law.

Thus, as I noted a moment or two ago, the Law of Variation tells us that there will always be some possessed of great desire to compel others to do their bidding and simultaneously possessed of the collection of rare aptitudes and moral attitudes enabling them to organize or gain control of the master instrument of constraint — that is, government; and so it will be done. The Iron Law then tells us that this tends inevitably to be an exploitive state, for possession of the power provides opportunity to tax or steal from the governed with immunity from retaliation, and this is likely to occur if for no other reason than that for the higher echelons of the ruling party to command the loyalty and obedience of the lower ones, the latter must receive more than their exertions would otherwise procure them. And from where else can the needed something-for-nothing bribe be obtained other than by taking it from the governed? You can see large-scale illustration of this in Russia and elsewhere; in miniature you can see the same principle at work in American graft, "pork barrel" legislation, patronage, "make-work" jobs, "handouts."

The authoritarian society is the natural and stable form of society because it is in solid conformity with the survival characteristics of the human being. It is dominant in history. Once established it tends to perpetuate itself because those wielding power seldom give it up short of bloodshed. If an authoritative state is overthrown through organization and exercise of still greater physical power, then the wielders thereof won't let their power go after they have won. They just become the new set of rulers. Hence, much of human history is the story of a squirrel-cage succession of one authoritative regime after another from which the people almost never break out, as you may see in many countries of the world. George Washington was the exception. He refused to become our king; he gave up his wartime powers and insisted upon establishment of a representative republic of limited power. He uniquely opened the door to the squirrel cage. We can, of course, crawl back into the cage, well-baited with promised security; and the door will then snap shut.

Communism

I turn next to socialism or communism that flies the banner, "From each according to his abilities, to each according to his needs." I consider it not because

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it ever has or could actually exist for long in the story of mankind, but because it exists so often and persistently in men's minds. I know *why* it appeals: It operates powerfully upon the imaginative projection of the pain-pleasure scale. It seems to promise to each one freedom from want, freedom from fear, and freedom from onerous exertion. What could be nicer?

But the communal society cannot endure because it defies both the Iron Law and the Law of Variation. It denies that there will be any people, per the Law of Variation, who will organize compulsion for their own benefit. But even beyond that it assumes that the survival human incentives behind the Iron Law are nonexistent or nonoperative. Thus, if the superior output of the more productive is taken from them by force or threat thereof (how else?), the reason for their superior exertion is automatically extinguished; communism assumes they would still be more productive. If the less productive get something for nothing, then their reasons for exerting themselves are also undermined. Theoretical communism would thus sever the survival connection between appetites and activity, transforming human objectives from the pursuit of individual productivity into the competitive practice of indolence. Chaos, such as Marx sought, is the result out of which arises dictatorship substituting fear of the whip for hope of reward as reason for its slaves' exertions. This we have seen in the transitory adoption of theoretical communism under the Russian revolution, to be superseded in a matter of hours by the organized coercion of a murderous dictatorship that has continued ever since in that land. The communist promises are only bait for the authoritarian trap.

The Individualist Society

This brings me to the individualist or voluntary society – in short, to the American economic system. In the authoritarian state the power to compel is used by its wielders to despoil those subject to it. In theoretical communism it is used to rob Peter to pay Paul – a sort of Robin Hood romanticism running riot. In the voluntary society the power is used by government exclusively to punish those who resort to fraud, theft, and coercion in their dealings with each other. Most especially the voluntary society in pure form can exist only if those administering its compulsive power refrain from using it in any way for the despoliation of some for the advantage of themselves or their partisans.

Since the voluntary society thus

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requires that the administrators of compulsion do not use it in the ways dictated by the Iron Law, this society is, like the communist society (although not so greatly), inherently unnatural and unstable. This is the society's Achilles' Heel; for the Iron Law, as we have noted, rests on most powerful survival urges. Yet on holding it in abeyance at this one point the society's survival depends.

I think the only thing that has restrained – or can restrain – the otherwise natural behavior of those administering the power of government is the presence of a widely and deeply held moral attitude that reaches back at least to the Commandment, "Thou shalt not steal," and to the doctrine founded on Scripture that all being equal before their Creator must hence be equal before the law. In fact, the voluntary society would apply the morality governing individual behavior to the behavior of groups operating, or operating through, government. Thus, only a highly moral and vigilant people can have and keep, or deserve, the voluntary society and the individual freedom that can exist only in a classless society that bans individual and intergroup compulsion and despoliation.

The voluntary society established with the writing of the Constitution has paid off handsomely in material terms – for those who like that reason for subscribing to moral attitudes. The economic system thereby established was one which said to every individual or family unit living under it: You can have everything you produce and no one – not even those who govern – can take it from you without your consent or compensation. On the other hand, it said: If you do not produce you have no recourse to the production of others – there will be no direct or indirect taking without paying. Thus, for the first time in history the great basic human motivations of hope and fear, pain and pleasure, were harnessed to give the maximum stimulus to each person's nonexploitive capacities that was possible without undermining a similar stimulus to others. It thus released, gave opportunity to, and stimulated *all* the talents of *all* the people. It automatically guided exertion to provide maximum achievable satisfaction since whatever non-harmful things were produced, by whom, where, when, in what amount, and at what price or wage were left to the voluntary decision of those concerned. Disciplining competition was also automatic because no one could prevent another from engaging in pursuits similar to his own.

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It is, therefore, perhaps no wonder that there then blossomed an ever-increasing flood of production of the good things of life, sometimes described as a miracle. It came from the social implementation of "Thou shalt not steal" – even through your government, and of "Do not coerce others as you would not be coerced" – even through your government. That is the deep-down unique thing about the American economic system, the precious key to its understanding. If the morality on which it rests is abandoned, the system will revert to brute totalitarianism.

I have no doubts about the basic morality of the American people as a whole and, moreover, the love of freedom is their cherished heritage and tradition. My concern, instead, is that they will not be alert; that they may be victimized by manipulators of the principles of perception I have noted and so led to condone government actions for seemingly good purposes, but which are nevertheless incompatible with the voluntary society and can lead, in turn, to further impairment of it.

From that viewpoint it is helpful to remember that for the voluntary society to endure, the power to tax must not be utilized to despoil some for the benefit of others; that citizens must be equal before the law and not classified by occupation or otherwise to be accorded largess, privilege, or unequal treatment; and that economic decisions must be free of coercion from any source, especially from government as in price and production decrees.

Taxation

With regard to taxation the Founding Fathers knew that, whereas in the authoritarian society the ruling minority uses taxes to despoil the majority, the problem when the ruling class is by definition the majority becomes one of restraining it from despoiling minorities. To meet that problem the Fathers wrote three provisions into the Constitution: First, only the House, where representation was proportional to population, could initiate tax legislation. Thus, taxing power, voting power, and population were in some measure equated. Second, all taxes had to be uniform geographically. Thus, those in regions representing a numerical majority could not combine to impose taxes on those in other areas which they themselves escaped. Third, all direct taxes – such as income taxes – had to be apportioned according to population. Thus, in effect, he who voted a direct tax, himself had to pay it. A majority could not vote a tax on an opulent mi-

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nority greater than it simultaneously voted on itself. It is true that dissenting minorities had to pay, but their despoliation was precluded by limiting their burden to that which the majority voluntarily voted on itself. And as *quid pro quo* they could enjoy, equally with the majority, the results of taxation as in highways, judicial systems, or post offices. Through these extraordinary provisions the morality of the Commandment was implemented; the socialization of stealing was prevented; the temptation to abuse the tax power in accordance with the Iron Law was thwarted – until 1913. In that year the Sixteenth Amendment abrogated the third protective provision with the fantastic ultimate consequences I previously noted. (Editor's Note: The author's views on "Liberty and Taxes" were set forth in more detail in the March 1963 issue of THE FREEMAN.)

Equality Before the Law

With regard to the maintenance of equality before the law the Constitution also had certain provisions. Thus, it forbade the granting of any title of nobility and, by the Thirteenth Amendment, it prohibited slavery and involuntary servitude (except as punishment for crime). It thus obliterated the, at that time, historic classifications of people into privileged and unprivileged classes. I think the general intent of the Founding Fathers was clear; the government was not to be the source of largess for anybody. Except for the payment of military pensions the Constitution does not specifically authorize unrequited payments to any group. I suspect the Fathers relied heavily on the protective tax provisions they had devised to prevent the government from being used to redistribute income. Thus, if the major burden of taxation had to be carried by the majority that voted it, then it is likely that only disbursements benefiting the majority would be authorized – that is, only those which promoted the *general* welfare, as is indeed authorized by the Constitution. Put another way, the rob-Peter-pay-Paul process doesn't work very well if the operator of it finds that he himself is the selected Peter.

The Welfare State

Despite this intent, and perhaps even more because the bar to discriminatory taxation was removed, we all know that the Welfare and Commerce clauses of the Constitution have been stretched to cover the transformation of our voluntary society, in good measure, into a so-called welfare state.

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People have been deliberately classified by occupation, by age, by geography, and by income status in order to be accorded *un*equal treatment under the law. Farmers, old folks, unemployed people, and even foreigners – to name some classifications – have been recipients of untold and unearned billions of dollars collected in taxes heavily loaded against the more productive and augmented by what amounts to "printing press" money. Government compulsion has been directly introduced into many wage, price, and production decisions. Powers of compulsion have additionally been delegated to industry-wide labor monopolies, granted immunity from laws that others must obey and able to impose widespread economic hardship to enforce their demands. The welfare state is a modern name for an approximation of the ideal communism I previously described and which, as I noted, will not work. It causes, does not cure, economic stagnation and hence widens the opportunity for ever-increasing government intervention in economic decisions.

The Future

Does this mean that the American economic system cannot endure; that deeply-rooted human nature – the Iron Law and the Law of Variation – is going to win in the end; that this extraordinary voluntary society is only an accident created by a group of inspired thinkers and imposed on an un-understanding populace who have ever since been retrograding back to the authoritarian society via the communist anteroom?

The doubters and the pessimists have the easy job. They can cite human nature and the many leaks that have already occurred in the moral dike behind which our society lives; they can cite the doubts of the Founding Fathers themselves, the fears expressed by such students as Lord Macaulay and William Graham Sumner. They can quote Karl Marx's confidence that our society could be wrecked, Khrushchev's roarings that he will bury us. And they can find no one who has with confidence and conviction made the case that our society is inherently a durable one.

But I cannot accept that view. At the beginning of these remarks I asked you to remember that I would come back to the truth that man does not live by bread alone. Man is more than economic man. He is moral man. This you know by merely observing it. Each knows someone whose wisdom, insight, structure of moral attitudes, and serene adherence to them command your reverence. People do have ideals and live by

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them despite seeming disadvantage to themselves in terms of the materialistic pain-pleasure and exertion scales of measurements. Christianity was founded by one such person.

The voluntary society will survive, I believe, because its threatened submergence has caused people to re-examine and rediscover its foundations in time-tested morals – and they find them good and worth living for and by. There is a great ground swell of reawakening understanding and appreciation abroad in our land. People are beginning to detect and resent the collectivistic trends hiding behind "do-good" proposals. They can, by realizing that people do not normally "collapse time" in their thinking, thereby through self-discounting learn actually to do it. Out of their own contemplations they can erect a structure of principles and convictions which will overcome within themselves what I have tagged as the threshold of perception and action, and so get just as mad and effective about a little stealing as about a lot of stealing, just because it is stealing and transgresses the Commandment, "Thou shalt not steal." That way leaks in the moral dike, behind which liberty lives, can get closed before they become floods. The camel's nose in our tent will be recognized, resented, and repelled before his whole ungainly form can follow it in. They will become vigilant, through realizing that without vigilance liberty can be lost.

In short, and in conclusion, the prospects for the unique American economic system finally rest with you and me and our children and their children, and the moral attitudes to which we uncompromisingly subscribe and by which we will live. ◈

IDEAS ON LIBERTY

The Common Good

TO SUSTAIN the individual freedom of action contemplated by the Constitution is not to strike down the common good, but to exalt it; for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members.

JUSTICE GEORGE SUTHERLAND
Adkins vs. *Children's Hospital*, 1923
(261 U.S. 525)

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RIEDMAN on REEDOM

PROFESSOR Milton Friedman of the University of Chicago is a principled man. He lives in an unprincipled society. In this he is not unusual; many of us are in the same fix. But in applying his principles Professor Friedman is quite unlike anybody else now writing. His latest book, *Capitalism and Freedom* (University of Chicago Press, $3.95), combines an exhilarating impudence with an ability to fasten upon the oddest sort of perspectives. Friedman never answers a cliché with a counter-cliché; he is always, on principle, outrageous. The ordinary believer in the welfare state must find his defenses in a shambles after reading Friedman on education, or on discrimination, or on social security. But the ordinary libertarian will also find his arguments in complete disarray as he seeks to square his answers with those which Friedman so devastatingly supplies.

What is the libertarian to think when Friedman says, for example, that the union shop is justified by the principle of freedom of contract? Or when he says that the automatic gold standard would, if re-adopted today, prove a great disappointment, if not wholly disastrous? Or that government, instead of giving aid directly to schools, should subsidize people for the education of their children by giving them vouchers cashable in any school they may happen to select? Or that we would have better medicine if there were no licensing of physicians in accordance with prescribed standards of training? Or that we might, to alleviate poverty, employ "negative" income taxation – i.e., make grants of money to individuals who earn less than a taxable amount of income in any given year? Or that government should expand the currency supply to take care of a stipulated annual rate of growth – say between 3 and 5 per cent?

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Encountering propositions of this sort, the libertarian may well wonder just where Professor Friedman does stand in this business of relying on government to keep people from making mistakes. But Friedman is ready for those who might charge him with inconsistency or willingness to compromise.

The "Neighborhood Effect"

Professor Friedman bases his whole program on the ancient liberal (or modern conservative) principle that one man's freedom to use his fist is necessarily limited by the proximity of another man's chin. But in the Friedman interpretation of the principle, the neighbor's "chin" must be made symbolically to stand for what Frederick Hayek has called the "neighborhood effect." It is an obviously unjustified "neighborhood effect" if you contaminate a downstream reservoir by pouring a poison into your own small upstream pond. But there are other ways of "poisoning" the neighborhood than by dumping one's wastes in a place that hurts the property next door.

Thus "ignorance" can have a "neighborhood effect" by creating an unstable society. Simply to save the literate from the stupidities of the illiterate, Professor Friedman thinks the state is justified in requiring that everybody have a certain minimum of schooling. But his own principle of freedom requires that this schooling should be provided by institutions freely selected by the parents of tomorrow's citizens. Hence Professor Friedman's championship of his voucher system, which would allow the private school to compete with the public school on equal terms. It would, incidentally, let southerners make their own individual decisions on "integration."

Monetary Measures

Professor Friedman's case for gearing the money supply to an agreed-upon rate of economic expansion follows from his concern with the "neighborhood effects" of depression. The gold standard, he thinks, is deficient because it soon becomes a myth in an economic society that relies primarily on credit and fiduciary money of one kind or another. One trouble with gold is that there isn't enough of it to support a world system; if it works well for one country, it will, by that very token, work badly for another. Professor Friedman doesn't even like a "gold-backed" currency, with "fractional reserves." He would let the price of gold be set in the open market, and let anybody own it. Meanwhile, he would have Con-

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gress legislate a rule instructing the Federal Reserve System to expand the currency at a specified monthly rate.

If such a system had been in operation in 1931 and 1932, so Professor Friedman thinks, the 1929 depression would have had a relatively short duration. Following Arthur Burns, he argues that the Federal Reserve, acting on the wrong principles, did little or nothing to provide a staggering banking system with needed liquidity. Indeed, the "Fed" proved to be a much less reliable bulwark than J. P. Morgan's consortium of private bankers had been in the depression of the nineties or in the crisis of 1907.

Professor Friedman thinks his idea of alleviating poverty by distributing funds through "negative" income taxation would enable the government to do away with a whole batch of expensive welfare activities. The poor farmer, getting a quarterly grant whenever his estimated income fell below a taxable point, would not need crop controls or support prices for his wheat or peanuts. The 70-year-old who lacks a private pension would get his living allowance without having to depend on a costly and bureaucratic system of social security. And the worker, guaranteed a certain amount of income through the workings of "negative" taxation, would not feel the need of minimum wage laws or of special pro-union legislation.

The libertarian, faced with coming to a decision on the Friedman program, must admit that it would have astounding virtues. It would automatically result in the closing of scores of Washington agencies and bureaus. Between them, the Director of Internal Revenue and the Federal Reserve Bank could handle practically everything.

Whose Neighborhood?

The only trouble with the whole tissue of Friedman propositions is that it depends on establishing a prior consensus. But with every pressure group in the nation fighting to get it's own particular definition of "neighborhood effects" accepted, where would it all end? Many farmers think the "neighborhood effects" of below-parity wheat prices are pernicious. Egalitarians think the presence of rich people spoils the tone of society — which is another way of implying that the "neighborhood effects" of flat-rate taxation of incomes is bad. Professor Friedman no doubt thinks it monstrous that the federal government uses the "general welfare" clause of the Constitution to justify many of the things it now does. But would it improve matters if the power to levy

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taxes to overcome bad "neighborhood effects" were to be substituted for the power to tax for the general welfare?

I put this in the form of a question, for I myself accept the proposition that the freedom of my fist is limited by the proximity of the other man's chin. Dazzled by Friedman, I am not at all certain at the moment where "chin" ceases to be a negotiable symbol for "neighborhood." Tomorrow, when the mists produced by the charming Friedman rhetoric have cleared from my brain, I will probably have things under control. But for the moment I have been staggered by the most provocative book on the current intellectual horizon. Read it and be all shook up. ◈

▸ MAN'S PRESUMPTUOUS BRAIN by A. T. W. Simeons, M.D. (New York: Dutton, 1961, $5.75 cloth, $1.45 paper)

Reviewed by Edmund A. Opitz

THIS brilliant essay in the field of psychosomatic medicine has a misleading title. It is the frontal lobe of the brain, the cortex, whose "presumption"—the author, a medical specialist, argues – is at the root of many mental as well as physical disorders in modern man. As evolutionary time goes, this part of the brain is new; as a recent arrival, it tends to scorn its primitive cousin, the diencephalon – the most important part of the brain stem. The cortex can use the body to frame a syllogism, work out a philosophical system, or invent the wheel; but it cannot grow a fingernail, repair a wound, or digest a fragment of bread. Only the body under diencephalic control can do such things. These two portions of the brain got along together pretty well until inventive man multiplied his artifacts to the point where one day he discovered he was civilized.

Civilization, this "new artificial environment which man began to build for himself at the dawn of culture, made many of his animal reflexes useless." The structures of civilization are largely a projection of the cortex, but they are out of phase with older portions of the brain. Civilized man ceased to be on good terms with his body, and the diencephalon takes out its frustrations in the form of harmful physiological activities. Result? Ulcers, high blood pressure, obesity, one form of diabetes, rheumatism, and other diseases.

This book makes a valuable contribution toward self-understanding, but its thesis also speaks to us on political philosophy. We have given political power to the Man with The Plan, and he is re-

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sponsible for much of the ruin wrought upon the modern world. His rationalistic schemes and blueprints for running society from the top down are products of the presumptuous cortex which perforce ignores the deliverances of the other parts of the brain. There'd be personal harmony if we were on better terms with the diencephalon, and this would be reflected in a social order which takes all facets of human nature into account. ◈

IDEAS ON LIBERTY

Who Will Refuse?

WE NEED NEW recognition of the power which lies within us. We need to know that the life of God is within us in far greater measure than we now believe. We turn despairingly to the state, which is the vainest of hopes, because we do not believe enough in either God or man. Let us lift up our hearts. For which one of us is it that will refuse his help in a case of real human need? You? I? Or is the finger to be pointed again at that nebulous scapegoat "someone else"?

I write as a minister, and I want to attest that through an experience of thirty years I have never seen a church member fail to respond to an authentic case of human need. And from those who could and did help when I have described such a case, I have invariably received expressions of gratitude that the opportunity was presented.

It is that faith which we need restored today.

RUSSELL J. CLINCHY, *Charity: Biblical and Political*

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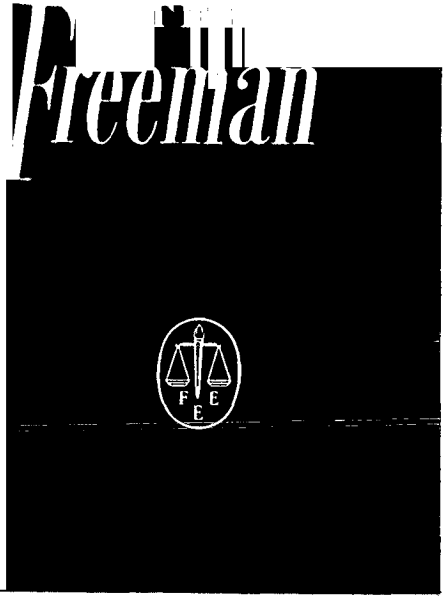

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■ Mankind does not begin with liberty. Mankind acquires liberty through civilization. . . .

The state which attempts to realize liberty before government, or the world-order before the national-order, will find itself immediately threatened with dissolution and anarchy.

JOHN W. BURGESS, Political Science and Constitutional Law—1890

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